

AMENDED IN ASSEMBLY MAY 6, 2004

AMENDED IN ASSEMBLY APRIL 1, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 2701

Introduced by Assembly Member Runner

February 20, 2004

An act to amend Sections 13144 and 13152 *of*, and to repeal Section 12847.5 of, the Food and ~~Agriculture~~ *Agricultural* Code, to amend ~~Section 12812.2, and to repeal Section 12812.5 of, Sections 12812.2 and 12812.5 of~~ the Government Code, to amend Sections 901, 25174, 25178, ~~25244.11~~, 25295, 25299.81, 25369, 25395.32, 39607.5, ~~40459~~, 41712, ~~41865~~, ~~43101~~, ~~43105.5~~, ~~39619.5~~, ~~41712~~, ~~41865~~, ~~43101~~, 44011.6, 44100, 44104.5, 57007, and 115910 *of*; and to repeal Sections ~~25244.11, 25395.32~~, 39604, 39702.5, 43032, ~~43101~~, and 59019 of, the Health and Safety Code, to amend Section 14315 of the Penal Code, *to amend Sections 42885.5, 42889.4 and 42889.5 of*, to add Chapter 4 (commencing with Section 71069) to Part 2 of Division 34 of, and to repeal ~~Sections 42889.1 and 42889.4~~ *Section 42889.1* of, the Public Resources Code, to amend Sections 7672, 7711 and 7712 of the Public Utilities Code, to amend Sections 13191, 13292, 13369, and 13385 of, and to repeal Sections 10782, 13192, 13198, and 13399.39 of, the Water Code, and to ~~repeal~~ *amend* Section 4 of Chapter 435 of the Statutes of 1994, relating to environmental protection.

LEGISLATIVE COUNSEL'S DIGEST

AB 2701, as amended, Runner. Environmental protection: reports.

Existing law requires the California Environmental Protection Agency, and its boards, departments, and offices to prepare and submit to the Governor and the Legislature various reports containing specified information on the implementation and effectiveness of certain programs, policies, and projects to ensure the protection of natural resources in the state.

This bill would require the California Integrated Waste Management Board, in consultation with state agencies that are affected by the changes made by the bill, to develop and implement guidelines, by January 1, 2005, to provide and produce reports and other documentation, including guidance documents, fact sheets, and other publications and written materials, in the most efficient and environmentally sustainable manner possible. The bill would require the guidelines to include the distribution of reports and other documentation by electronic means and compact discs, information on posting reports and other documentation on state agency Web sites, and techniques for the production of reports and other documentation that ~~are economically and environmentally preferable, including, but not limited to, double-sided printing, using postconsumer recycled content paper, and minimizing ink coverage~~ *will reduce and encourage the use of recycled goods, materials, and supplies*, specified cost reduction options, and the distribution of a reasonable number of printed reports to ensure public access.

The bill would require the board, before February 1, 2005, to distribute the guidelines to all state agencies.

The bill would require the agency and its boards, departments, and offices, on and after February 1, 2005, to provide and produce reports and other documentation pursuant to these guidelines, and would require all state agencies, after June 1, 2005, to provide and produce reports and other documentation pursuant to these guidelines.

The bill would revise and eliminate various existing reporting requirements for the agency and other state agencies.

(2) Existing law requires the Public Utilities Commission to adopt regulations by January 1, 1993, to reduce potential railroad hazards, including regulations concerning the transportation of hazardous or potentially hazardous commodities.

This bill would repeal the requirement that the commission adopt the regulations concerning the transportation of those hazardous commodities.



Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 12847.5 of the Food and Agricultural
2 Code is repealed.
3 SEC. 2. Section 13144 of the Food and Agricultural Code is
4 amended to read:
5 13144. The department shall establish specific numerical
6 values for water solubility, soil adsorption coefficient (Koc),
7 hydrolysis, aerobic and anaerobic soil metabolism, and field
8 dissipation. The values established by the department shall be at
9 least equal to those established by the Environmental Protection
10 Agency. The department may revise the numerical values when
11 the department finds that the revision is necessary to protect the
12 groundwater of the state. The numerical values established or
13 revised by the department shall always be at least as stringent as
14 the values being used by the Environmental Protection Agency at
15 the time the values are established or revised by the department.
16 SEC. 3. Section 13152 of the Food and Agricultural Code is
17 amended to read:
18 13152. (a) The department shall conduct ongoing soil and
19 groundwater monitoring of any pesticide whose continued use is
20 permitted pursuant to paragraph (3) of subdivision (d) of Section
21 13150.
22 (b) Any pesticide monitored pursuant to this section that is
23 determined, by review of monitoring data and any other relevant
24 data, to pollute the groundwaters of the state two years after the
25 director takes action pursuant to paragraph (3) of subdivision (d)
26 of Section 13150 shall be canceled unless the director has
27 determined that the adverse health effects of the pesticide are not
28 carcinogenic, mutagenic, teratogenic, or neurotoxic.
29 (c) The department shall maintain a statewide data base of
30 wells sampled for pesticide active ingredients. All agencies shall
31 submit to the department, in a timely manner, the results of any
32 well sampling for pesticide active ingredients and the results of
33 any well sampling that detect any pesticide active ingredients.
34 (d) Not later than June 30, 1986, the director, the State
35 Department of Health Services, and the board shall jointly

1 establish minimum requirements for well sampling that will
2 ensure precise and accurate results. The requirements shall be
3 distributed to all agencies that conduct well sampling. All well
4 sampling conducted after December 1, 1986, shall meet the
5 minimum requirements established pursuant to this subdivision.

6 (e) The department shall post the following information on its
7 Web site:

8 (1) The number of wells sampled for pesticide active
9 ingredients, the location of the wells from which the samples were
10 taken, the well numbers, if available, and the agencies responsible
11 for drawing and analyzing the samples.

12 (2) The number of well samples with detectable levels of
13 pesticide active ingredients, the location of the wells from which
14 the samples were taken, the well numbers, if available, and the
15 agencies responsible for drawing and analyzing the samples.

16 (3) An analysis of the results of well sampling described in
17 paragraphs (1) and (2), to determine the probable source of the
18 residues. The analysis shall consider factors such as the physical
19 and chemical characteristics of the pesticide, volume of use and
20 method of application of the pesticide, irrigation practices related
21 to use of the pesticide, and types of soil in areas where the pesticide
22 is applied.

23 (4) Actions taken by the director and the board to prevent
24 pesticides from migrating to groundwaters of the state.

25 SEC. 4. Section 12812.2 of the Government Code is amended
26 to read:

27 12812.2. (a) One of the deputies to the Secretary for
28 Environmental Protection authorized pursuant to Section 12812.1
29 shall be a deputy secretary for law enforcement and counsel, who,
30 subject to the direction and supervision of the secretary, shall have
31 the responsibility and authority to do all of the following:

32 (1) Develop a program to ensure that the boards, departments,
33 offices, and other agencies that implement laws or regulations
34 within the jurisdiction of the California Environmental Protection
35 Agency take consistent, effective, and coordinated compliance
36 and enforcement actions to protect public health and the
37 environment. The program shall include training and
38 cross-training of inspection and enforcement personnel of those
39 boards, departments, offices, or other agencies to ensure
40 consistent, effective, and coordinated enforcement.

(2) In consultation with the Attorney General, establish a cross-media enforcement unit to assist a board, department, office, or other agency that implements a law or regulation within the jurisdiction of the California Environmental Protection Agency, to investigate and prepare matters for enforcement action in order to protect public health and the environment. The unit may inspect and investigate a violation of a law or regulation within the jurisdiction of the board, department, office, or other agency, including a violation involving more than one environmental medium and a violation involving the jurisdiction of more than one board, department, office, or agency. The unit shall exercise its authority consistent with the authority granted to the head of a department pursuant to Article 2 (commencing with Section 11180) of Chapter 2 of Part 1.

(3) Refer a violation of a law or regulation within the jurisdiction of a board, department, office, or other agency that implements a law or regulation within the jurisdiction of the California Environmental Protection Agency to the Attorney General, a district attorney, or city attorney for the filing of a civil or criminal action.

(4) Exercise the authority granted pursuant to paragraph (3) only after providing notice to the board, department, office, or other agency unless the secretary determines that notice would compromise an investigation or enforcement action.

(b) Nothing in this section shall authorize the deputy secretary for law enforcement and counsel to duplicate, overlap, compromise, or otherwise interfere with an investigation or enforcement action undertaken by a board, department, office, or other agency that implements a law or regulation subject to the jurisdiction of the California Environmental Protection Agency.

(c) The Environmental Protection Agency shall post on its Web site the status of the implementation of this section.

SEC. 5. Section 12812.5 of the Government Code is amended to read:

12812.5. On or before March 1, 1994, the California Environmental Protection Agency, using existing resources and in consultation with other relevant agencies in state and local government, shall do all of the following:

(a) Establish an environmental technologies clearinghouse, which shall include, but not be limited to, maintaining information

1 on California-based environmental technology companies and
2 information on funding sources for environmental technology
3 endeavors and making this information available to interested
4 parties.

5 (b) Make available technical assistance within the California
6 Environmental Protection Agency to assist California-based
7 environmental technology companies to improve export
8 opportunities, and to enhance foreign buyers' awareness of, and
9 access to, environmental technologies and services offered by
10 California-based companies. The technical assistance may
11 include, but is not limited to, organizing and leading trade
12 missions, receiving reverse trade missions, referral services,
13 reviewing project opportunities, and notifying California-based
14 companies of export opportunities and trade shows.

15 (c) Perform research studies and solicit technical advice to
16 identify international market opportunities for California-based
17 environmental technology companies.

18 (d) Participate in federally and other non-state funded technical
19 exchange programs, when appropriate, to increase foreign buyers'
20 interest in California's environmental technologies.

21 (e) Coordinate activities in state government, and with the
22 federal government and other countries' governments, to take
23 advantage of trade promotion and financial assistance
24 opportunities available to California-based environmental
25 technology companies.

26 SEC. 6. Section 901 of the Health and Safety Code is amended
27 to read:

28 901. (a) As used in this section:

29 (1) "Center" means the Children's Environmental Health
30 Center established pursuant to Section 900.

31 (2) "Office" means the Office of Environmental Health
32 Hazard Assessment.

33 (b) On or before June 30, 2001, the office shall review cancer
34 risk assessment guidelines for use by the office and the other
35 entities within the California Environmental Protection Agency to
36 establish cancer potency values or numerical health guidance
37 values that adequately address carcinogenic exposures to the fetus,
38 infants, and children.

39 (c) The review required by subdivision (b) shall include a
40 review of existing state and federal cancer risk guidelines, as well

1 as new information on carcinogenesis, and shall consider the
2 extent to which those guidelines address risks from exposures
3 occurring early in life.

4 (d) The review required by subdivision (b) shall also include,
5 but not be limited to, all of the following:

6 (1) The development of criteria for identifying carcinogens
7 likely to have a greater impact if exposures occur early in life.

8 (2) The assessment of methodologies used in existing
9 guidelines to address early-in-life exposures.

10 (3) The construction of a data base of animal studies to evaluate
11 increases in risks from short-term early-in-life exposures.

12 (e) On or before June 30, 2004, the office shall finalize and
13 publish children's cancer guidelines that shall be protective of
14 children's health. These guidelines shall be revised and updated as
15 needed by the office.

16 (f) (1) On or before December 31, 2002, the office shall
17 publish a guidance document, for use by the Department of Toxic
18 Substances Control and other state and local environmental and
19 public health agencies, to assess exposures and health risks at
20 existing and proposed schoolsites. The guidance document shall
21 include, but not be limited to, all of the following:

22 (A) Appropriate child-specific routes of exposure unique to the
23 school environment, in addition to those in existing exposure
24 assessment models.

25 (B) Appropriate available child-specific numerical health
26 effects guidance values, and plans for the development of
27 additional child-specific numerical health effects guidance values.

28 (C) The identification of uncertainties in the risk assessment
29 guidance, and those actions that should be taken to address those
30 uncertainties.

31 (2) The office shall consult with the Department of Toxic
32 Substances Control and the State Department of Education in the
33 preparation of the guidance document required by paragraph (1)
34 to ensure that it provides the information necessary for these two
35 agencies to meet the requirements of Sections 17210.1 and
36 17213.1 of the Education Code.

37 (g) On or before January 1, 2002, the office, in consultation
38 with the appropriate entities within the California Environmental
39 Protection Agency, shall identify those chemical contaminants
40 commonly found at schoolsites and determined by the office to be

1 of greatest concern based on criteria that identify child-specific
2 exposures and child-specific physiological sensitivities. On or
3 before December 31, 2002, and annually thereafter, the office shall
4 publish and make available to the public and to other state and local
5 environmental and public health agencies and school districts,
6 numerical health guidance values for five of those chemical
7 contaminants identified pursuant to this subdivision until the
8 contaminants identified have been exhausted.

9 (h) On and after January 1, 2002, and biennially thereafter, the
10 center shall report to the Legislature and the Governor on the
11 implementation of this section as part of the report required by
12 subdivision (d) of Section 900. The report shall include, but not be
13 limited to, information on revisions or modifications made by the
14 office and other entities within the California Environmental
15 Protection Agency to cancer potency values and other numerical
16 health guidance values in order to be protective of children's
17 health. The report shall also describe the use of the revised health
18 guidance values in the programs and activities of the office and the
19 other boards and departments within the California Environmental
20 Protection Agency.

21 (i) Nothing in this section relieves any entity within the
22 California Environmental Protection Agency of complying with
23 Chapter 3.5 (commencing with Section 11340) of Part 2 of
24 Division 3 of Title 2 of the Government Code, to the extent that
25 chapter is applicable to the entity on or before July 19, 2000, or
26 January 1, 1998.

27 SEC. 7. Section 25174 of the Health and Safety Code is
28 amended to read:

29 25174. (a) There is in the General Fund the Hazardous Waste
30 Control Account, which shall be administered by the director. In
31 addition to any other money that may be deposited in the
32 Hazardous Waste Control Account, pursuant to statute, all of the
33 following amounts shall be deposited in the account:

34 (1) The fees collected pursuant to Sections 25174.1, 25205.2,
35 25205.5, 25205.15, and 25205.16.

36 (2) The fees collected pursuant to Section 25187.2, to the
37 extent that those fees are for the oversight of corrective action
38 taken under this chapter.

39 (3) Any interest earned upon the money deposited in the
40 Hazardous Waste Control Account.

1 (4) Any money received from the federal government pursuant
2 to the federal act.

3 (5) Any reimbursements for funds expended from the
4 Hazardous Waste Control Account for services provided by the
5 department pursuant to this chapter, including, but not limited to,
6 the reimbursements required pursuant to Sections 25201.9 and
7 25205.7.

8 (b) The funds deposited in the Hazardous Waste Control
9 Account may be appropriated by the Legislature, for expenditure
10 as follows:

11 (1) To the department for the administration and
12 implementation of this chapter.

13 (2) To the department for allocation to the State Board of
14 Equalization to pay refunds of fees collected pursuant to Sections
15 43051 and 43053 of the Revenue and Taxation Code.

16 (3) To the department for the costs of performance or review of
17 analyses of past, present, or potential environmental public health
18 effects related to toxic substances, including extremely hazardous
19 waste, as defined in Section 25115, and hazardous waste, as
20 defined in Section 25117.

21 (4) (A) To the office of the Attorney General for the support
22 of the Toxic Substance Enforcement Program in the office of the
23 Attorney General, in carrying out the purposes of this chapter.

24 (B) Notwithstanding subdivision (c), expenditures for the
25 purposes of this paragraph shall not be subject to an interagency
26 or interdepartmental agreement.

27 (C) On or before October 1 of each year, the Attorney General
28 shall report to the Legislature on the expenditure of any funds
29 appropriated to the office of the Attorney General for the
30 preceding fiscal year pursuant to this paragraph and subdivision
31 (c) of Section 25173.6. The report shall include all of the
32 following:

33 (i) A description of cases resolved by the office of the Attorney
34 General through settlement or court order, including the monetary
35 benefit to the department and the state.

36 (ii) A description of injunctions or other court orders benefiting
37 the people of the state.

38 (iii) A description of any cases in which the Attorney General's
39 Toxic Substance Enforcement Program is representing the

1 department or the state against claims by defendants or responsible
2 parties.

3 (iv) A description of other pending litigation handled by the
4 Attorney General's Toxic Substance Enforcement Program.

5 (D) Nothing in subparagraph (C) shall require the Attorney
6 General to report on any confidential or investigatory matter.

7 (5) To the department, on and after July 1, 1999, for
8 administration and implementation of Chapter 6.11 (commencing
9 with Section 25404).

10 (c) Except for the appropriation to the office of the Attorney
11 General pursuant to paragraph (4) of subdivision (b), expenditures
12 from the Hazardous Waste Control Account for support of state
13 agencies other than the department shall, upon appropriation by
14 the Legislature to the department, be subject to an interagency or
15 interdepartmental agreement between the department and the state
16 agency receiving the support.

17 (d) Notwithstanding this chapter, or Part 22 (commencing with
18 Section 43001) of Division 2 of the Revenue and Taxation Code,
19 for any fees, surcharges, fines, penalties, and funds which are
20 required to be deposited into the Hazardous Waste Control
21 Account or the Toxic Substances Control Account, the
22 department, with the approval of the Secretary for Environmental
23 Protection, may take any of the following actions:

24 (1) Assume responsibility for, or enter into a contract with a
25 private party or with another public agency, other than the State
26 Board of Equalization, for the collection of any fees, surcharges,
27 fines, penalties and funds described in subdivision (a) or otherwise
28 described in this chapter or Chapter 6.8 (commencing with Section
29 25300), for deposit into the Hazardous Waste Control Account or
30 the Toxic Substances Control Account.

31 (2) Administer, or by mutual agreement, contract with a private
32 party or another public agency, for the making of those
33 determinations and the performance of functions that would
34 otherwise be the responsibility of the State Board of Equalization
35 pursuant to this chapter, Chapter 6.8 (commencing with Section
36 25300), or Part 22 (commencing with Section 43001) of Division
37 2 of the Revenue and Taxation Code, if those activities and
38 functions for which the State Board of Equalization would
39 otherwise be responsible become the responsibility of the

1 department or, by mutual agreement, the contractor selected by the
2 department.

3 (e) If, pursuant to subdivision (e), the department, or a private
4 party or another public agency, pursuant to a contract with the
5 department, performs the determinations and functions that would
6 otherwise be the responsibility of the State Board of Equalization,
7 the department shall be responsible for ensuring that persons who
8 are subject to the fees specified in subdivision (e) have equivalent
9 rights to public notice and comment, and procedural and
10 substantive rights of appeal, as afforded by the procedures of the
11 State Board of Equalization pursuant to Part 22 (commencing with
12 Section 43001) of Division 2 of the Revenue and Taxation Code.
13 Final responsibility for the administrative adjustment of fee rates
14 and the administrative appeal of any fees or penalty assessments
15 made pursuant to this section may only be assigned by the
16 department to a public agency.

17 (f) If, pursuant to subdivision (e), the department, or a private
18 party or another public agency, pursuant to a contract with the
19 department, performs the determinations and functions that would
20 otherwise be the responsibility of the State Board of Equalization,
21 the department shall have equivalent authority to make collections
22 and enforce judgments as provided to the State Board of
23 Equalization pursuant to Part 22 (commencing with Section
24 43001) of Division 2 of the Revenue and Taxation Code. Unpaid
25 amounts, including penalties and interest, shall be a perfected and
26 enforceable state tax lien in accordance with Section 43413 of the
27 Revenue and Taxation Code.

28 (g) The department, with the concurrence of the Secretary for
29 Environmental Protection, shall determine which administrative
30 functions should be retained by the State Board of Equalization,
31 administered by the department, or assigned to another public
32 agency or private party pursuant to subdivisions (e), (f), and (g).

33 (h) The department may adopt regulations to implement
34 subdivisions (e) to (h), inclusive.

35 (i) The Director of Finance, upon request of the director, may
36 make a loan from the General Fund to the Hazardous Waste
37 Control Account to meet cash needs. The loan shall be subject to
38 the repayment provisions of Section 16351 of the Government
39 Code and the interest provisions of Section 16314 of the
40 Government Code.

(j) The department shall establish, within the Hazardous Waste Control Account, a reserve of at least one million dollars (\$1,000,000) each year to ensure that all programs funded by the Hazardous Waste Control Account will not be adversely affected by any revenue shortfalls.

(k) When the department prepares the annual report required by Section 10359 of the Public Contract Code, the department shall, in addition to providing the information required by that section, include all of the following information:

(1) The source of funding for each contract.

(2) The statutory authorization, if applicable, for each contract.

SEC. 8. Section 25178 of the Health and Safety Code is amended to read:

25178. On or before January 1 of each odd-numbered year, the department shall post on its Web site, at a minimum, all of the following:

(a) The status of the regulatory and program developments required pursuant to legislative mandates.

(b) (1) The status of the hazardous waste facilities permit program that shall include all of the following information:

(A) A description of the final hazardous waste facilities permit applications received.

(B) The number of final hazardous waste facilities permits issued to date.

(C) The number of final hazardous waste facilities permits yet to be issued.

(D) A complete description of the reasons why the final hazardous waste facilities permits yet to be issued have not been issued.

(2) For purposes of paragraph (1), “hazardous waste facility” means a facility that uses a land disposal method, as defined in subdivision (d) of Section 25179.2, and that disposes of wastes regulated as hazardous waste pursuant to the federal act.

(c) The status of the hazardous waste facilities siting program.

(d) The status of the hazardous waste abandoned sites program.

(e) A summary of enforcement actions taken by the department pursuant to this chapter and any other actions relating to hazardous waste management.

(f) Summary data on annual quantities and types of hazardous waste generated, transported, treated, stored, and disposed.

(g) Summary data regarding onsite and offsite disposition of hazardous waste.

(h) Research activity initiated by the department.

(i) Regulatory action by other agencies relating to hazardous waste management.

(j) A revised listing of recyclable materials showing any additions or deletions to the list prepared pursuant to Section 25175 that have occurred since the last report.

(k) Any other data considered pertinent by the department to hazardous waste management.

(l) The information specified in subdivision (c) of Section 25161, paragraph (4) of subdivision (a) of Section 25197.1, subdivision (c) of Section 25354, and Sections 25334.7, and 25356.5.

(m) A status report on the cleanup of the McColl Hazardous Waste Disposal Site in Orange County.

~~SEC. 9. Section 25244.11 of the Health and Safety Code is repealed.~~

SEC. 9. Section 25244.11 of the Health and Safety Code is amended to read:

~~25244.11. The department shall, by January 1, 1988, and each year thereafter, report to the Governor and the Legislature, including the Chairpersons of the Senate Committee on Appropriations, Assembly Committee on Ways and Means, Joint Legislative Budget Committee, and Assembly Committee on Economic Development and New Technologies, on the status, funding, and results of all demonstration and research projects awarded grants during a year when grant funds are made available.~~

This report shall include recommendations for legislation and shall identify those state and federal economic and financial incentives which can best accelerate and maximize the research, development, and demonstration of hazardous waste reduction, recycling, and treatment technologies.

SEC. 10. Section 25295 of the Health and Safety Code is amended to read:

25295. (a) (1) Any unauthorized release which escapes from the secondary containment, or from the primary containment, if no secondary containment exists, increases the hazard of fire or explosion, or causes any deterioration of the

1 secondary containment of the underground tank system shall be
2 reported by the owner or operator to the local agency designated
3 pursuant to Section 25283 within 24 hours after the release has
4 been detected or should have been detected. A full written report
5 shall be transmitted by the owner or operator of the underground
6 tank system to the local agency within five working days of the
7 occurrence of the release. The report shall describe the nature and
8 volume of the unauthorized release, any corrective or remedial
9 actions undertaken, and any further corrective or remedial actions,
10 including investigative actions, which will be needed to clean up
11 the unauthorized release and abate the effects of the release and a
12 time schedule for implementing these actions.

13 (2) The local agency shall review the permit whenever there
14 has been an unauthorized release or when it determines that the
15 underground tank system is unsafe. In determining whether to
16 modify or terminate the permit, the local agency shall consider the
17 age of the tank, the methods of containment, the methods of
18 monitoring, the feasibility of any required repairs, the
19 concentration of the hazardous substances stored in the tank, the
20 severity of potential unauthorized releases, and the suitability of
21 any other long-term preventive measures which would meet the
22 requirements of this chapter.

23 (b) The board shall continuously post on its Web site a report
24 of all unauthorized releases, indicating for each unauthorized
25 release the site name, the hazardous substances, and the actions
26 taken to abate the problem.

27 (c) The reporting requirements imposed by this section are in
28 addition to any requirements which may be imposed by Sections
29 13271 and 13272 of the Water Code.

30 SEC. 11. Section 25299.81 of the Health and Safety Code is
31 amended to read:

32 25299.81. (a) Except as provided in subdivisions (b) and (c),
33 this chapter shall remain in effect only until January 1, 2011, and
34 as of that date is repealed, unless a later enacted statute, which is
35 enacted before January 1, 2011, deletes or extends that date.

36 (b) Notwithstanding subdivision (a), Article 1 (commencing
37 with Section 25299.10), Article 2 (commencing with Section
38 25299.11), and Article 4 (commencing with Section 25299.36)
39 shall not be repealed and shall remain in effect on January 1, 2011.



(c) The repeal of certain portions of this chapter does not terminate any of the following rights, obligations, or authorities, or any provision necessary to carry out these rights and obligations:

(1) The filing and payment of claims against the fund, including the costs specified in subdivisions (c), (e), and (h) of Section 25299.51, and claims for commingled plumes, as specified in Article 11 (commencing with Section 25299.90), until the moneys in the fund are exhausted. Upon exhaustion of the fund, any remaining claims shall be invalid.

(2) The repayment of loans, outstanding as of January 1, 2011, due and payable to the board.

(3) The recovery of moneys reimbursed to a claimant to which the claimant is not entitled, or the resolution of any cost recovery action.

(4) The collection of unpaid fees that are imposed pursuant to Article 5 (commencing with Section 25299.40), as that article read on December 31, 2010, or have become due before January 1, 2011, including any interest or penalties that accrue before, on, or after January 1, 2011, associated with those unpaid fees.

(d) The board shall continuously post, on its Web site, information that describes the status of the fund *and shall make recommendations, when appropriate, to improve the efficiency of the program.*

SEC. 12. Section 25369 of the Health and Safety Code is amended to read:

25369. The department shall establish an abandoned site program to survey counties where abandoned site surveys have not been completed. As part of the program, the department shall do all of the following:

(a) Develop protocols and procedures for conducting an abandoned site survey of rural unsurveyed counties. These protocols shall address all types of sites likely to be found in these counties, including, but not limited to, crop-duster airstrips, abandoned mining operations, pesticide formulators and manufacturers, abandoned wells, oil exploration and extraction, wood treatment plants, land disposal sites, and scrap metal operations.

(b) Notify the California regional water quality control boards, the Department of Fish and Game, local health officers, county

1 directors of environmental health, county agricultural
2 commissioners, and state and federal land management agencies
3 of the abandoned site program. Notifications shall consist of the
4 following:

5 (1) Explanation of the abandoned site program.

6 (2) Description of the California Superfund Program,
7 including the availability of state funds for cleaning up abandoned
8 hazardous waste sites, and that discovery of a site does not impose
9 liability for cleanup.

10 (3) Provide a copy of the program's protocols and procedures
11 outlining sites the state is attempting to identify.

12 (4) Request that, as part of each respective agency's duties, it
13 report to the state abandoned site program any suspected
14 abandoned waste site.

15 (5) Request that each participating agency, as a part of its
16 regular activities, notify the department of sites identified in
17 writing at least quarterly.

18 (c) Prepare an inventory of suspected abandoned hazardous
19 substance release sites.

20 (d) Contact the owners and occupants of suspected abandoned
21 sites.

22 (e) Maintain individual records for each suspected abandoned
23 site.

24 (f) Develop a methodology for screening sites identified.

25 (g) Conduct a field assessment of those sites which the
26 screening procedures specified in subdivision (f) indicate require
27 this assessment.

28 (h) Rank the assessed sites, in order of priority, as presenting a
29 potential hazard to public health or the environment consistent
30 with Section 25356 or regulations adopted pursuant to that section.

31 ~~(i) Post on its Web site an update on the progress of the~~
32 ~~abandoned sites survey, identifying the agencies that have~~
33 ~~identified and reported sites to the department, as well as the~~
34 ~~agencies that have reported that they do not intend to participate~~
35 ~~in the program.~~

36 ~~SEC. 13. Section 25395.32 of the Health and Safety Code is~~
37 ~~repealed.~~

38 *SEC. 13. Section 25395.32 of the Health and Safety Code is*
39 *amended to read:*

1 25395.32. On or before January 10 of each year *when a loan*
2 *under this article is made or repaid during the previous fiscal year,*
3 the secretary shall report to the Joint Legislative Budget
4 Committee and to the chairs of the appropriate policy committees
5 of the Senate and the Assembly, and shall post on the Internet web
6 site of the agency, all of the following:

7 (a) The number and dollar amount of loans approved pursuant
8 to Section 25395.21, the number and dollar amount of those loans
9 that have been repaid, and, the number and dollar amount of those
10 loans that are in default.

11 (b) The number and dollar amount of loans waived pursuant to
12 subdivision (f) of Section 25395.21.

13 (c) The number and dollar amount of loans approved pursuant
14 to Section 25395.23, the number and dollar amount of those loans
15 that have been repaid, and the number and dollar amount of those
16 loans that are in default.

17 (d) The number of preliminary endangerment assessments
18 completed pursuant to agreements entered into under this article.

19 (e) The number of sites where necessary response actions have
20 been completed pursuant to agreements entered into under this
21 article.

22 SEC. 14. Section 39604 of the Health and Safety Code is
23 repealed.

24 SEC. 15. Section 39607.5 of the Health and Safety Code is
25 amended to read:

26 39607.5. (a) The state board shall develop, and adopt in a
27 public hearing a methodology for use by districts to calculate the
28 value of credits issued for emission reductions from stationary,
29 mobile, indirect, and areawide sources, including those issued
30 under market-based incentive programs, when those credits are
31 used interchangeably.

32 (b) In developing the methodology, the state board shall do all
33 of the following:

34 (1) Ensure that the methodology results in the maintenance and
35 improvement of air quality consistent with this division.

36 (2) Allow those credits to be used in a market-based incentive
37 program adopted pursuant to Section 39616 that requires annual
38 reductions in emissions through declining annual allocations, and
39 allow the use of all of those credits, including those from a

1 market-based incentive program, to meet other stationary or
2 mobile source requirements that do not expressly prohibit that use.

3 (3) Ensure that the methodology does not do any of the
4 following:

5 (A) Result in the crediting of air emissions that already have
6 been identified as emission reductions necessary to achieve state
7 and federal ambient air quality standards.

8 (B) Provide for an additional discount of credits solely as a
9 result of emission reduction credits trading if a district already has
10 discounted the credit as part of its process of identifying and
11 granting those credits to sources.

12 (C) Otherwise provide for double-counting emission
13 reductions.

14 (4) Consult with, and consider the suggestions of, the public
15 and all interested parties, including, but not limited to, the
16 California Air Pollution Control Officers Association and all
17 affected regulated entities.

18 (5) Ensure that any credits, whether they are derived from
19 stationary, mobile, indirect, or areawide sources, shall be
20 permanent, enforceable, quantifiable, and surplus.

21 (6) Ensure that any credits derived from a market-based
22 incentive program adopted pursuant to Section 39616 are
23 permanent, enforceable, quantifiable, and are in addition to any
24 required controls, unless those credits otherwise comply with
25 paragraph (2).

26 (7) Consider all of the following factors:

27 (A) How long credits should be valid.

28 (B) Whether, and which, banking opportunities may exist for
29 credits.

30 (C) How to provide flexibility to sources seeking to use credits
31 so that they remain interchangeable and negotiable until used.

32 (D) How to ensure a viable trading process for sources wishing
33 to trade credits consistent with this section.

34 (E) How to ensure that, if credits may be used within and
35 between adjacent districts or air basins where sources are in
36 proximity to one another, the use occurs while maintaining and
37 improving air quality in both districts or air basins.

38 (c) If necessary, the state board shall periodically update the
39 methodology as it applies to future transactions.



1 (d) The state board shall periodically review each district's
2 emission reduction and credit trading programs to ensure that the
3 programs comply with the methodology developed pursuant to
4 this section.

5 SEC. 16. *Section 39619.5 of the Health and Safety Code is*
6 *amended to read:*

7 39619.5. ~~(a)~~—The state board shall develop and conduct an
8 expanded and revised program of monitoring of airborne fine
9 particles smaller than 2.5 microns in diameter (PM 2.5). The
10 program shall be designed to accomplish all of the following:

11 ~~(1)~~—

12 (a) The monitoring method selected shall be capable of
13 accurately representing the spectrum of compounds that comprise
14 PM 2.5 in the atmosphere of regions where monitoring is
15 conducted, including nitrates and other inorganic compounds, as
16 well as carbonaceous materials.

17 ~~(2)~~—

18 (b) To the extent feasible, the state board shall consider
19 approved federal particulate methods in selecting a monitoring
20 method for the program.

21 ~~(3)~~—

22 (c) The monitoring network used in the program shall site
23 monitors so as to characterize population exposure, background
24 conditions, and transport influence, and attain any other objective
25 identified by the state board as necessary to understand conditions
26 and to provide information for the development of control
27 strategies.

28 ~~(4)~~—

29 (d) Portable monitors shall be used in locations not now
30 monitored for PM 10, but where elevated PM 2.5 might be
31 expected.

32 ~~(5)~~—

33 (e) During the initial two years of expanded monitoring, PM
34 2.5 monitoring shall be done at one or more of the highest level PM
35 10 sites in any region that violates the federal ambient air quality
36 standard for PM 10, to enable a determination of the correlation
37 between levels of PM 10 and PM 2.5.

38 ~~(6)~~—

(f) In regions where ambient source characterization studies for PM 2.5 have not been completed, the state board shall work with the district to develop and conduct those studies.

~~(b) The state board shall report annually by January 1 to the Legislature on the status and results of the airborne fine particle air pollution monitoring program.~~

SEC. 17. Section 39702.5 of the Health and Safety Code is repealed.

~~SEC. 17.~~ Section 40459 of the Health and Safety Code is amended to read:

~~40459. (a) (1) Except as provided in paragraph (4), on or before January 1, 2001, the operator of any facility within either the Port of Los Angeles or the Port of Long Beach that stores, handles, or transports petroleum coke and is subject to the enclosed storage pile deadlines of Rule 1158 shall comply with the enclosure requirement of Rule 1158.~~

~~(2) Except as provided in paragraph (4), on or before January 1, 2002, the facility operator at the Port of Los Angeles shall enclose the ready pile referenced in subparagraph (k)(10) of Rule 1158.~~

~~(3) On or before January 1, 2004, the facility operator at the Port of Long Beach shall discontinue the use of, or replace the shiploader referenced in subparagraph (k)(6) of Rule 1158.~~

~~(4) Notwithstanding paragraphs (1) and (2), if the construction of additional enclosed storage within the Port of Los Angeles is commenced on or before April 1, 2001, the facility operator is not required to comply with subparagraph (k)(10) of Rule 1158 until April 1, 2002.~~

~~For purposes of this paragraph, “construction of additional enclosed storage” means any storage enclosure for which the south coast district issues a permit to construct on or after January 1, 2001, but before April 1, 2001, and construction begins on or before April 1, 2001.~~

~~(b) The south coast district, shall annually submit a study to the Legislature that examines the frequency and severity of violations of south coast district rules related to the storage, transportation, and handling of petroleum coke.~~

~~(c) Until the facility operator at the Port of Los Angeles encloses the outdoor ready pile, as specified in paragraph (2) of subdivision (a), the south coast district shall monitor the size of~~

1 ~~that ready pile to ensure compliance with the 50,000 metric-ton~~
2 ~~limit requirement in that facility's March 31, 1999, Rule 1158~~
3 ~~interim storage plan.~~

4 (d) ~~On and after January 1, 2003, the south coast district shall~~
5 ~~maintain a program to monitor particulates within the Port of Los~~
6 ~~Angeles and the Port of Long Beach and shall assess prevalent~~
7 ~~coke particulates and improvements in air quality.~~

8 (e) ~~For purposes of this section, "Rule 1158" means the rule~~
9 ~~adopted by the south coast district on December 2, 1983, and~~
10 ~~amended June 11, 1999, pursuant to this chapter. Any terms used~~
11 ~~in this section and in Rule 1158 shall have the same meaning as~~
12 ~~provided in Rule 1158.~~

13 SEC. 18. Section 41712 of the Health and Safety Code is
14 amended to read:

15 41712. (a) For purposes of this section, the following terms
16 have the following meaning:

17 (1) "Consumer product" means a chemically formulated
18 product used by household and institutional consumers, including,
19 but not limited to, detergents; cleaning compounds; polishes; floor
20 finishes; cosmetics; personal care products; home, lawn, and
21 garden products; disinfectants; sanitizers; aerosol paints; and
22 automotive specialty products; but does not include other paint
23 products, furniture coatings, or architectural coatings.

24 (2) "Health benefit product" means an antimicrobial product
25 registered with the Environmental Protection Agency.

26 (3) "Maximum feasible reduction in volatile organic
27 compounds emitted" means at least a 60-percent reduction in the
28 emissions of volatile organic compounds resulting from the use of
29 aerosol paints, calculated with respect to the 1989 baseline year,
30 including acetone in that baseline year.

31 (4) "Medical expert" means a physician, including a
32 pediatrician, a microbiologist, or a scientist involved in research
33 related to infectious disease and infection control.

34 (b) The state board shall adopt regulations to achieve the
35 maximum feasible reduction in volatile organic compounds
36 emitted by consumer products, if the state board determines that
37 adequate data exists to establish both of the following:

38 (1) The regulations are necessary to attain state and federal
39 ambient air quality standards.

1 (2) The regulations are commercially and technologically
2 feasible and necessary.

3 (c) A regulation shall not be adopted which requires the
4 elimination of a product form.

5 (d) The state board shall not adopt regulations pursuant to
6 subdivision (b) unless the regulations are technologically and
7 commercially feasible, and necessary to carry out this division.
8 The state board shall consider the effect that the regulations
9 proposed for health benefit products will have on the efficacy of
10 those products in killing or inactivating agents of infectious
11 diseases such as viruses, bacteria, and fungi, and the impact the
12 regulations will have on the availability of health benefit products
13 to California consumers.

14 (e) Prior to adopting regulations pursuant to this section
15 governing health benefit products, the state board shall consider
16 any recommendations received from federal, state, or local public
17 health agencies and medical experts in the field of public health.

18 (f) A district shall adopt no regulation pertaining to
19 disinfectants, nor any regulation pertaining to a consumer product
20 that is different than any regulation adopted by the state board for
21 that purpose.

22 (g) A consumer product manufactured prior to each effective
23 date specified in regulations adopted by the state board pursuant
24 to this section that applies to that consumer product may be sold,
25 supplied, or offered for sale for a period of three years from the
26 specified effective date if the date of manufacture or a
27 representative date code is clearly displayed on the product at the
28 point of sale. An explanation of the date code shall be filed with
29 the state board.

30 (h) (1) It is the intent of the Legislature that, prior to January
31 1, 2000, air pollution control standards affecting the formulation
32 of aerosol adhesives and limiting emissions of reactive organic
33 compounds resulting from the use of aerosol adhesives be set
34 solely by the state board to ensure uniform standards applicable on
35 a statewide basis.

36 (2) The Legislature recognizes that the current state board
37 volatile organic compound (VOC) limit for aerosol adhesives is 75
38 percent by weight. Effective January 1, 1997, the state board's
39 75-percent standard shall apply to all uses of aerosol adhesives,
40 including consumer, industrial, and commercial uses, and any

1 district regulations limiting the VOC content of, or emissions
2 from, aerosol adhesives, are null and void. After that date, a district
3 may adopt and enforce the state board's 75-percent standard for
4 aerosol adhesives, or a subsequently adopted state board standard,
5 in the same manner as a district regulation limiting the issuance of
6 air contaminants.

7 (3) Notwithstanding any other provision of this section, on and
8 after January 1, 2000, a district may adopt and enforce a regulation
9 setting an emission standard or standards for VOC emissions for
10 the use of aerosol adhesives that is more stringent than the
11 standards adopted by the state board.

12 (i) (1) It is the intent of the Legislature that air pollution
13 control standards affecting the formulation of aerosol paints and
14 limiting the emissions of volatile organic compounds resulting
15 from the use of aerosol paints be set solely by the state board to
16 ensure uniform standards applicable on a statewide basis. A
17 district shall not adopt or enforce any regulation regarding the
18 volatile organic compound content of, or emissions from, aerosol
19 paints until the state board has adopted a regulation regarding
20 those paints, and any district regulation shall not be different than
21 the state board regulation. A district may observe and enforce a
22 state board regulation regarding aerosol paints in the same manner
23 as a district regulation limiting the issuance of air contaminants.
24 This subdivision shall not apply to any district that has adopted a
25 rule or regulation regarding aerosol paints pursuant to an order of
26 a federal court, until the federal court has authorized the district to
27 observe and enforce the state board regulation in lieu of the district
28 regulation.

29 (2) The state board shall adopt regulations requiring the
30 maximum feasible reduction in volatile organic compounds
31 emitted from the use of aerosol paints. The regulations shall
32 establish final limits and require full compliance, and shall
33 establish interim limits prior to that date resulting in reductions in
34 reactive organic compounds.

35 (3) The state board shall conduct a public hearing on the
36 technological or commercial feasibility of achieving full
37 compliance with the final limits. If the state board determines that
38 a 60-percent reduction in emissions of reactive organic
39 compounds from the use of aerosol paints is not technologically or
40 commercially feasible, the state board may grant an extension of

1 time not to exceed five years. During any extension of time, the
2 most stringent interim limits shall be applicable. Any regulation
3 adopted by the state board shall include a provision authorizing the
4 time extension and requiring a public hearing on technological or
5 commercial feasibility consistent with this subdivision. The state
6 board shall seek to ensure that the final limits for aerosol paints
7 established pursuant to this subdivision do not become federally
8 enforceable prior to the effective date established by the state
9 board for these limits, including any extension granted under this
10 subdivision.

11 (4) Reductions required for aerosol paints under this
12 subdivision are not intended to apply to any other consumer
13 product.

14 (j) The state board shall not adopt a regulation pertaining to
15 disinfectants any sooner than December 1, 2003.

16 (k) The state board shall comply with its volatile organic
17 compound emission reduction obligations under the 1994 State
18 Implementation Plan, or any amendments thereto, and shall ensure
19 that there is no loss of emission reductions as a result of its
20 compliance with subdivision (j).

21 SEC. 19. Section 41865 of the Health and Safety Code is
22 amended to read:

23 41865. (a) This section shall be known, and may be cited, as
24 the Connelly-Areias-Chandler Rice Straw Burning Reduction Act
25 of 1991.

26 (b) As used in this section:

27 (1) "Sacramento Valley Air Basin" means the area designated
28 by the state board pursuant to Section 39606.

29 (2) "Air pollution control council" means the Sacramento
30 Valley Basinwide Air Pollution Control Council authorized
31 pursuant to Section 40900.

32 (3) "Conditional rice straw burning permit" means a permit to
33 burn granted pursuant to subdivisions (f) and (h).

34 (4) "Allowable acres to be burned" means the number of acres
35 that may be burned pursuant to subdivision (c).

36 (5) "Department" means the Department of Food and
37 Agriculture.

38 (6) "Maximum fall burn acres" means the maximum amount
39 of rice acreage that may be burned from September 1 to December
40 31, inclusive, of each year.

(7) “Maximum spring burn acres” means the maximum amount of rice acreage that may be burned from January 1 to May 31 of the following year, inclusive.

(c) Notwithstanding Section 41850, rice straw burning in counties in the Sacramento Valley Air Basin shall be phased down, as follows:

(1) From 1998 to 2000, the maximum spring and fall burn acres shall be the following number of acres planted prior to September 1 of each year:

Year	Maximum Fall Burn Acres	Maximum Spring Burn Acres
1998	90,000	110,000
1999	90,000	110,000
2000	90,000	110,000

(2) Notwithstanding paragraph (1), any of the 90,000 acres allocated in the fall that are not burned may be added to the maximum spring burn acres, provided that the maximum spring burn acres does not exceed 160,000 acres.

(3) Notwithstanding paragraph (1), the maximum acres burned between January 1, 1998, and August 31, 1998, shall be limited so that the total acres burned between September 1, 1997, and August 31, 1998, do not exceed 38 percent of the total acres planted prior to September 1, 1997.

(4) In 2001 and thereafter, the maximum annual burn acres shall be the number of acres prescribed in subdivision (i), subject to subdivisions (f) and (h).

(d) The number of allowable acres to be burned each day shall be determined by the state board and the air pollution control officers in the Sacramento Valley Air Basin and equitably allocated among rice growers in accordance with the annual agricultural burning plan adopted by the air pollution control council and approved by the state board.

(e) On or before September 1, 2000, the state board, in consultation with the department and the air pollution control council, shall adopt regulations consistent with the criteria provided in subdivisions (f) and (h). On or before September 1, 1996, an advisory group shall be established by the state board and the department to assist in the adoption of those regulations.

(f) Commencing September 1, 2001, the county air pollution control officers in the Sacramento Valley Air Basin may grant conditional rice straw burning permits once the county agricultural commissioner has determined that the applicant has met the conditions specified in subdivision (h). The county agricultural commissioner shall be responsible for all field inspections associated with the issuance of conditional rice straw burning permits. A conditional rice straw burning permit shall be valid for only one burn, per field, per year.

(g) The county agricultural commissioner may charge the applicant a fee not to exceed the costs incurred by the county agricultural commissioner in making the determination specified in subdivision (f). This subdivision shall be operative only until January 1, 2009.

(h) If the terms and conditions for issuing conditional rice straw burning permits specified in paragraphs (1) to (4), inclusive, are met, a conditional rice straw burning permit may be issued unless the state board and the department have jointly determined, based upon an annual review process, that there are other economically and technically feasible alternative means of eliminating the disease that are not substantially more costly to the applicant. The terms and conditions for issuing the conditional rice straw burning permits are:

(1) The fields to be burned are specifically described.

(2) The applicant has not violated any provision of this section within the previous three years.

(3) During the growing season, the county agricultural commissioner has independently determined the significant presence of a pathogen in an amount sufficient to constitute a rice disease such as stem rot.

(4) The county agricultural commissioner makes a finding that the existence of the pathogen as identified in paragraph (3) will likely cause a significant, quantifiable reduction in yield in the field to be burned during the current or next growing season. The findings of the county agricultural commissioner shall be based on recommendations adopted by the advisory group established pursuant to subdivision (e).

(i) (1) The maximum annual number of acres burned in the Sacramento Valley Air Basin pursuant to paragraph (4) of subdivision (c) shall be the lesser of:

1 (A) The total of 25 percent of each individual applicant's
2 planted acres that year.

3 (B) A total of 125,000 acres planted in the Sacramento Valley
4 Air Basin.

5 (2) Each grower shall be eligible to burn up to 25 percent of the
6 grower's planted acres, as determined by the air pollution control
7 officers in the Sacramento Valley Air Basin and subject to the
8 maximum annual number of acres burned set forth in paragraph
9 (1), if the grower has met the criteria for a conditional rice straw
10 burning permit.

11 (3) The air pollution control council shall annually determine
12 which is the lesser of subparagraphs (A) and (B) of paragraph (1),
13 and shall determine the maximum percentage applicable to all
14 growers subject to the conditions set forth in subdivisions (f) and
15 (h).

16 (4) A grower who owns or operates 400 acres or less who has
17 met the criteria for the issuance of a conditional rice straw burning
18 permit may burn his or her entire acreage once every four years,
19 provided that the limit prescribed in paragraph (1) is not exceeded.

20 (5) Nothing in this subdivision shall permit an applicant to
21 transfer, sell, or trade any permission to burn granted pursuant to
22 this subdivision to another applicant or individual.

23 (j) The state board and the department shall jointly determine
24 if the allowable acres to be burned, as provided in subdivisions (c),
25 (f), and (h), may be exceeded due to extraordinary circumstances,
26 such as an act of God, that have an impact over a continuing
27 duration and make alternatives other than burning unusable.

28 (k) "Administrative burning" means burning of vegetative
29 materials along roads, in ditches, and on levees adjacent to or
30 within a rice field, or the burning of vegetative materials on rice
31 research facilities authorized by the county agricultural
32 commissioner, not to exceed 2,000 acres. Administrative burning
33 conducted in accordance with Section 41852 is not subject to this
34 section.

35 (l) (1) On or before September 1, 1992, the state board and the
36 department shall jointly establish an advisory committee
37 composed of 10 members to assist with the identification and
38 implementation of alternatives to rice straw burning. Members of
39 the committee shall be from the Sacramento Valley Air Basin, and
40 the committee shall consist of two rice growers, two

1 representatives from the environmental community, two health
2 officials, two county supervisors or their designees, one member
3 from the air pollution control council, and one member from the
4 business community with expertise in market or product
5 development. The committee shall meet at least annually. General
6 Fund moneys shall not be used to support the committee.

7 (2) The committee shall develop a list of priority goals for the
8 development of alternative uses of rice straw for the purpose of
9 developing feasible and cost-effective alternatives to rice straw
10 burning. These goals shall include, but not be limited to, research
11 on alternatives, economic incentives to encourage alternative uses,
12 and new product development.

13 (m) On or before September 1, 1998, the state board, in
14 consultation with the department, the advisory committee, and the
15 Trade and Commerce Agency, shall develop an implementation
16 plan and a schedule to achieve diversion of not less than 50 percent
17 of rice straw produced toward off-field uses by 2000. Off-field
18 uses may include, but are not limited to, the production of energy
19 and fuels, construction materials, pulp and paper, and livestock
20 feed.

21 (n) The Legislature hereby finds and declares as follows:

22 (1) Because of the requirements imposed by this section, rice
23 straw that was previously burned may present, as solid waste, a
24 new disposal problem.

25 (2) The state should assist local governments and growers in
26 diverting rice straw from landfills by researching and developing
27 diversion options.

28 (o) It is the intent of the Legislature that all feasible alternatives
29 to rice straw burning and options for diverting rice straw from
30 landfills be encouraged.

31 (p) This subdivision confirms that reductions in emissions
32 from rice straw burning qualify for air quality offsets, in
33 accordance with paragraphs (1) and (2).

34 (1) These credits shall meet the requirements specified in state
35 law and district rules and regulations, and shall comply with
36 applicable district banking rules established pursuant to Sections
37 40709 to 40713, inclusive. Districts are urged to establish banking
38 systems in accordance with Sections 40709 to 40713, inclusive.
39 The state board may adopt regulations to implement this
40 subdivision, including, but not limited to, consideration of the

1 seasonal and intermittent nature of rice straw burning emissions.
2 In developing the regulations, the state board shall consult with all
3 concerned parties. However, emission reduction credits that
4 would otherwise accrue from reductions in emissions from rice
5 straw burning shall not be affected or negated by the phasedown
6 of burning, as specified in subdivision (c).

7 (2) Reductions in emissions achieved in compliance with
8 subdivision (c) that are banked or used as credits shall not be
9 credited for purposes of attainment planning and progress towards
10 the attainment of any state or national ambient air quality standard
11 as required by state and federal law.

12 (q) (1) Any person who negligently or intentionally violates
13 any provision of this article is guilty of a misdemeanor and is
14 subject to a fine of not more than ten thousand dollars (\$10,000),
15 imprisonment in the county jail for not more than nine months, or
16 by both that fine and imprisonment. This subdivision applies only
17 to agricultural burning in the Sacramento Valley Air Basin.

18 (2) Any person who negligently or intentionally violates any
19 provision in this article is liable for a civil penalty of not more than
20 ten thousand dollars (\$10,000). This subdivision applies only to
21 agricultural burning in the Sacramento Valley Air Basin.

22 (r) Districts in the Sacramento Valley Air Basin shall impose
23 fees on growers to cover the cost of implementing this section
24 pursuant to Section 42311.

25 (s) To the extent that resources are available, the state board and
26 the agencies with jurisdiction over air quality within the
27 Sacramento Valley Air Basin shall do both of the following:

28 (1) Improve responses to citizen complaints, and, to the extent
29 feasible, immediately investigate and analyze smoke complaints
30 from the public to identify factors that contribute to complaints
31 and to develop better smoke control measures to be included in the
32 agricultural burning plan, keep a record of all complaints,
33 coordinate among other agencies on citizens' complaints, and
34 investigate the source of the pollution causing the complaint.

35 (2) Respond more quickly to requests for update from county
36 air pollution control officers to help maximize burning days when
37 meteorological conditions are best suited for smoke dispersion.

38 SEC. 20. *Section 43032 of the Health and Safety Code is*
39 *repealed.*

~~43032. Notwithstanding Section 7550.5 of the Government Code, on or before January 1, 2002, the state board shall report to the Assembly Committee on Natural Resources, the Assembly Committee on Transportation, the Senate Committee on Criminal Procedure, and the Senate Committee on Transportation all violations that are subject to this chapter, any settlements reached, and the rate of compliance with any requirements that are subject to this chapter.~~

SEC. 21. Section 43101 of the Health and Safety Code is amended to read:

43101. (a) The state board shall adopt and implement emission standards for new motor vehicles for the control of emissions from new motor vehicles that the state board finds to be necessary and technologically feasible to carry out the purposes of this division. Before adopting these standards, the state board shall consider the impact of these standards on the economy of the state, including, but not limited to, their effect on motor vehicle fuel efficiency.

(b) The standards adopted pursuant to this section may be applicable to motor vehicle engines, rather than to motor vehicles.

~~SEC. 21.~~ Section 43105.5 of the Health and Safety Code is amended to read:

~~43105.5. (a) For all 1994 and later model year motor vehicles equipped with on board diagnostic systems (OBD's) and certified in accordance with the test procedures adopted pursuant to Section 43104, the state board, not later than January 1, 2002, shall adopt regulations that require a motor vehicle manufacturer to do all of the following to the extent not limited or prohibited by federal law (the regulations adopted by the state board pursuant to this provision may include subject matter similar to the subject matter included in regulations adopted by the United States Environmental Protection Agency):~~

~~(1) Make available, within a reasonable period of time, and by reasonable business means, including, but not limited to, use of the Internet, as determined by the state board, to all covered persons, the full contents of all manuals, technical service bulletins, and training materials regarding emissions-related motor vehicle information that is made available to their franchised dealerships.~~

~~(2) Make available for sale to all covered persons the manufacturer's emissions-related enhanced diagnostic tools, and~~

1 ~~make emissions-related enhanced data stream information and~~
2 ~~bidirectional controls related to tools available in electronic format~~
3 ~~to equipment and tool companies.~~

4 ~~(3) If the motor vehicle manufacturer uses reprogrammable~~
5 ~~computer chips in its motor vehicles, provide equipment and tool~~
6 ~~companies with the information that is provided by the~~
7 ~~manufacturer to its dealerships to allow those companies to~~
8 ~~incorporate into aftermarket tools the same reprogramming~~
9 ~~capability.~~

10 ~~(4) Make available to all covered persons, within a reasonable~~
11 ~~period of time, a general description of their on board diagnostic~~
12 ~~systems (OBD II) for the 1996 and subsequent model years, which~~
13 ~~shall contain the information described in this paragraph. For each~~
14 ~~monitoring system utilized by a manufacturer that illuminates the~~
15 ~~OBD II malfunction indicator light, the motor vehicle~~
16 ~~manufacturer shall provide all of the following:~~

17 ~~(A) A general description of the operation of the monitor,~~
18 ~~including a description of the parameter that is being monitored.~~

19 ~~(B) A listing of all typical OBD II diagnostic trouble codes~~
20 ~~associated with each monitor.~~

21 ~~(C) A description of the typical enabling conditions for each~~
22 ~~monitor to execute during vehicle operation, including, but not~~
23 ~~limited to, minimum and maximum intake air and engine coolant~~
24 ~~temperature, vehicle speed range, and time after engine startup.~~

25 ~~(D) A listing of each monitor sequence, execution frequency,~~
26 ~~and typical duration.~~

27 ~~(E) A listing of typical malfunction thresholds for each~~
28 ~~monitor.~~

29 ~~(F) For OBD II parameters for specific vehicles that deviate~~
30 ~~from the typical parameters, the OBD II description shall indicate~~
31 ~~the deviation and provide a separate listing of the typical value for~~
32 ~~those vehicles.~~

33 ~~(G) The information required by this paragraph shall not~~
34 ~~include specific algorithms, specific software code, or specific~~
35 ~~calibration data beyond that required to be made available through~~
36 ~~the generic scan tool in federal and California on board diagnostic~~
37 ~~regulations.~~

38 ~~(5) Not utilize any access or recognition code or any type of~~
39 ~~encryption for the purpose of preventing a vehicle owner from~~
40 ~~using an emissions-related motor vehicle part with the exception~~

1 of the powertrain control modules, engine control modules, and
2 transmission control modules, that has not been manufactured by
3 that manufacturer or any of its original equipment suppliers.

4 (6) Provide to all covered persons information regarding
5 initialization procedures relating to immobilizer circuits or other
6 lockout devices to reinitialize vehicle on-board computers that
7 employ integral vehicle security systems if necessary to repair or
8 replace an emissions-related part, or if necessary for the proper
9 installation of vehicle on-board computers that employ integral
10 vehicle security systems.

11 (7) All information required to be provided to covered persons
12 by this section shall be provided, for fair, reasonable, and
13 nondiscriminatory compensation, in a format that is readily
14 accessible to all covered persons, as determined by the state board.

15 (b) Any information required to be disclosed pursuant to a final
16 regulation adopted under this section that the motor vehicle
17 manufacturer demonstrates to a court, on a case-by-case basis, to
18 be a trade secret pursuant to the Uniform Trade Secret Act
19 contained in Title 5 (commencing with Section 3426) of Part 1 of
20 Division 4 of the Civil Code, shall be exempt from disclosure,
21 unless the court, upon the request of a covered person seeking
22 disclosure of the information, determines that the disclosure of the
23 information is necessary to mitigate anticompetitive effects. In
24 making this determination, the court shall consider, among other
25 things, the practices of any motor vehicle manufacturer that results
26 in the fullest disclosure of information listed in paragraph (4) of
27 subdivision (a). In actions subject to this subdivision, the court
28 shall preserve the secrecy of an alleged trade secret by reasonable
29 means, which may include granting a protective order in
30 connection with discovery proceedings, holding an in-camera
31 hearing, sealing the record of the action, or ordering any person
32 involved in the litigation not to disclose an alleged trade secret
33 without prior court approval.

34 (c) If information is required to be disclosed by a motor vehicle
35 manufacturer pursuant to subdivision (b), the court shall allow for
36 the imposition of reasonable business conditions as a condition of
37 disclosure, and may include punitive sanctions for the improper
38 release of information that is determined to be a trade secret to a
39 competitor of the manufacturer. The court shall also provide for
40 fair, reasonable, and nondiscriminatory compensation to the motor

1 vehicle manufacturer for the disclosure of information determined
2 by the court to be a trade secret and required to be disclosed
3 pursuant to subdivision (b). The court shall provide for the
4 dissemination of trade secret information required to be disclosed
5 pursuant to subdivision (b) through licensing agreements and the
6 collection of reasonable licensing fees. If the court determines that
7 disclosure of any of the information required to be disclosed under
8 subdivision (b) constitutes a taking of personal property, a jury
9 trial shall be held to determine the amount of compensation for that
10 taking, unless waived by the motor vehicle manufacturer.

11 (d) The state board shall periodically conduct surveys to
12 determine whether the information requirements imposed by this
13 section are being fulfilled by actual field availability of the
14 information.

15 (e) If the executive officer of the state board obtains credible
16 evidence that a motor vehicle manufacturer has failed to comply
17 with any of the requirements of this section or the regulations
18 adopted by the state board, the executive officer shall issue a notice
19 to comply to the manufacturer. Not later than 30 days after
20 issuance of the notice to comply, the vehicle manufacturer shall
21 submit to the executive officer a compliance plan, unless within
22 that 30-day period the manufacturer requests an administrative
23 hearing to contest the basis or scope of the notice to comply in
24 accordance with subdivision (f). The executive officer shall accept
25 the compliance plan if it provides adequate demonstration that the
26 manufacturer will come into compliance with this section and the
27 board's implementing regulations within 45 days following
28 submission of the plan. However, the executive officer may extend
29 the compliance period if the executive officer determines that the
30 violation cannot be remedied within that period.

31 (f) If the motor vehicle manufacturer contests a notice to
32 comply pursuant to subdivision (e) or the executive officer rejects
33 the compliance plan submitted by the manufacturer, an
34 administrative hearing shall be conducted by a hearing officer
35 appointed by the state board, in accordance with procedures
36 established by the state board. The hearing procedures shall
37 provide the manufacturer and any other interested party at least 30
38 days notice of the hearing. If, after the hearing, the hearing officer
39 appointed by the state board finds that the motor vehicle
40 manufacturer has failed to comply with any of the requirements of

~~this section or the regulations adopted by the state board, and the manufacturer fails to correct the violation with 30 days from the date of the finding, the hearing officer may impose a civil penalty upon the manufacturer in an amount not to exceed twenty-five thousand dollars (\$25,000) per day per violation until the violation is corrected, as determined in accordance with the hearing procedures established by the state board. The hearing procedures may provide additional time for compliance prior to imposing a civil penalty. If so, the hearing officer may grant additional time for compliance if he or she determines that the violation cannot be remedied within 30 days of the finding that a violation has occurred.~~

~~(g) Nothing in this section is intended to authorize the infringement of intellectual property rights embodied in United States patents, trademarks, or copyrights, to the extent those rights may be exercised consistently with any other federal laws.~~

~~SEC. 22. Section 44011 of the Health and Safety Code is amended to read:~~

~~44011. (a) All motor vehicles powered by internal combustion engines that are registered within an area designated for program coverage shall be required biennially to obtain a certificate of compliance or noncompliance, except for all of the following:~~

~~(1) Every motorcycle, and every diesel-powered vehicle, until the department, pursuant to Section 44012, implements test procedures applicable to motorcycles or to diesel-powered vehicles, or both.~~

~~(2) Any motor vehicle that has been issued a certificate of compliance or noncompliance or a repair cost waiver upon a change of ownership or initial registration in this state during the preceding six months.~~

~~(3) (A) Prior to January 1, 2003, any motor vehicle manufactured prior to the 1974 model year.~~

~~(B) Beginning January 1, 2003, any motor vehicle that is 30 or more model years old.~~

~~(4) (A) Any motor vehicle four or less model years old.~~

~~(B) Beginning January 1, 2004, any motor vehicle up to six model years old, unless the state board finds that providing an exception for these vehicles will prohibit the state from meeting the requirements of Section 176(e) of the Clean Air Act (42 U.S.C.~~

1 ~~Sec. 7401 et seq.) or the state's commitments with respect to the~~
2 ~~state implementation plan required by the Clean Air Act.~~

3 ~~(C) Any motor vehicle excepted by this paragraph shall be~~
4 ~~subject to testing and to certification requirements as determined~~
5 ~~by the department, if any of the following apply:~~

6 ~~(i) The department determines through remote sensing~~
7 ~~activities or other means that there is a substantial probability that~~
8 ~~the vehicle has a tampered emission control system or would fail~~
9 ~~for other cause a smog check test as specified in Section 44012.~~

10 ~~(ii) The vehicle was previously registered outside this state and~~
11 ~~is undergoing initial registration in this state.~~

12 ~~(iii) The vehicle is being registered as a specially constructed~~
13 ~~vehicle.~~

14 ~~(iv) The vehicle has been selected for testing pursuant to~~
15 ~~Section 44014.7 or any other provision of this chapter authorizing~~
16 ~~out-of-cycle testing.~~

17 ~~(5) In addition to the vehicles exempted pursuant to paragraph~~
18 ~~(4), any motor vehicle or class of motor vehicles exempted~~
19 ~~pursuant to subdivision (b) of Section 44024.5. It is the intent of~~
20 ~~the Legislature that the department, pursuant to the authority~~
21 ~~granted by this paragraph, exempt at least 15 percent of the lowest~~
22 ~~emitting motor vehicles from the biennial smog check inspection.~~

23 ~~(6) Any motor vehicle that the California Department of the~~
24 ~~Highway Patrol and the South Coast Air Quality Management~~
25 ~~District determines would present prohibitive inspection or repair~~
26 ~~problems.~~

27 ~~(7) Any vehicle registered to the owner of a fleet licensed~~
28 ~~pursuant to Section 44020 if the vehicle is garaged exclusively~~
29 ~~outside the area included in program coverage, and is not primarily~~
30 ~~operated inside the area included in program coverage.~~

31 ~~(b) Vehicles designated for program coverage in enhanced~~
32 ~~areas shall be required to obtain inspections from appropriate~~
33 ~~smog check stations operating in enhanced areas.~~

34 ~~SEC. 23.~~

35 *SEC. 22.* Section 44011.6 of the Health and Safety Code is
36 amended to read:

37 44011.6. (a) The use of a heavy-duty motor vehicle that emits
38 excessive smoke is prohibited.

39 (b) (1) As expeditiously as possible, the state board shall
40 develop a test procedure for the detection of excessive smoke

1 emissions from heavy-duty diesel motor vehicles that is feasible
2 for use in an intermittent roadside inspection program. During the
3 development of the test procedure, the state board shall cooperate
4 with the Department of the California Highway Patrol in
5 conducting roadside inspections.

6 (2) The state board may also specify visual or functional
7 inspection procedures to determine the presence of tampering or
8 defective emissions control systems in heavy-duty diesel or
9 heavy-duty gasoline motor vehicles. However, visual or
10 functional inspection procedures for heavy-duty gasoline motor
11 vehicles shall not be more stringent than those prescribed for
12 heavy-duty gasoline motor vehicles subject to biennial inspection
13 pursuant to Section 44013.

14 (3) The chairperson of the state board shall appoint an ad hoc
15 advisory committee that shall include, but not be limited to,
16 representatives of heavy-duty engine manufacturers, carriers of
17 property for compensation using heavy-duty gasoline or
18 heavy-duty diesel motor vehicles, and the Department of the
19 California Highway Patrol. The advisory committee shall
20 cooperate with the state board to develop a test procedure pursuant
21 to this subdivision and shall advise the state board in developing
22 regulations to implement test procedures and inspection of
23 heavy-duty commercial motor vehicles.

24 (c) Any smoke testing procedures or smoke measuring
25 equipment, including any meter that measures smoke opacity or
26 density and any recorder that stores or records smoke opacity or
27 density measurements, used to test for compliance with this
28 section and regulations adopted pursuant to this section, shall
29 produce consistent and repeatable results. The requirements of this
30 subdivision shall be satisfied by the adoption of Society of
31 Automotive Engineers recommended practice J 1667,
32 “Snap-Acceleration Smoke Test Procedures for Heavy-Duty
33 Diesel Powered Vehicles.”

34 (d) (1) The smoke test standards and procedures adopted and
35 implemented pursuant to this section shall be designed to ensure
36 that no engine will fail the smoke test standards and procedures
37 when the engine is in good operating condition and is adjusted to
38 the manufacturer’s specifications.

39 (2) In implementing this section, the state board shall adopt
40 regulations that ensure that there will be no false failures or that

1 ensure that the state board will remedy any false failures without
2 any penalty to the vehicle owner.

3 (e) The state board shall enforce the prohibition against the use
4 of heavy-duty motor vehicles that are determined to have
5 excessive smoke emissions and shall enforce any regulation
6 prohibiting the use of a heavy-duty motor vehicle determined to
7 have other emissions-related defects, using the test procedure
8 established pursuant to this section.

9 (f) The state board may issue a citation to the owner or operator
10 for any vehicle in violation of this section. The regulations may
11 require the operator of a vehicle to submit to a test procedure
12 adopted pursuant to subdivision (b) and this subdivision, and may
13 specify that refusal to so submit is an admission constituting proof
14 of a violation, and shall require that, when a citation has been
15 issued, the owner of a vehicle in violation of the regulations shall,
16 within 45 days, correct every deficiency specified in the citation.

17 (g) The department may develop criteria for one or more
18 classes of smog check stations capable of determining compliance
19 with regulations adopted pursuant to this section and may
20 authorize those stations to issue certificates of compliance to
21 vehicles in compliance with the regulations. The department may
22 contract for the operation of smog check stations for heavy-duty
23 motor vehicles pursuant to this subdivision, and only heavy-duty
24 motor vehicles may be inspected at those stations.

25 (h) In addition to the corrective action required by this section,
26 the owner of a motor vehicle in violation of this section is subject
27 to a civil penalty of not more than one thousand five hundred
28 dollars (\$1,500) per day for each day that the vehicle is in
29 violation. The state board may adopt a schedule of reduced civil
30 penalties to be applied in cases where violations are corrected in
31 an expeditious manner. However, the schedule of reduced civil
32 penalties shall not apply where there have been repeated incidents
33 of emissions control system tampering. All civil penalties imposed
34 pursuant to this subdivision shall be collected by the state board
35 and deposited in the Vehicle Inspection and Repair Fund. Funds in
36 the Vehicle Inspection and Repair Fund, when appropriated by the
37 Legislature, shall be available to the state board and the
38 Department of the California Highway Patrol for the conduct of
39 intermittent roadside inspections of heavy-duty motor vehicles
40 pursuant to this section.

1 (i) Following the adoption of regulations pursuant to this
2 section, the state board may commence inspecting heavy-duty
3 motor vehicles. With the concurrence of the Department of the
4 California Highway Patrol, these inspections may be conducted in
5 conjunction with the safety and weight enforcement activities of
6 the Department of the California Highway Patrol, or at other
7 locations selected by the state board or the Department of the
8 California Highway Patrol. Inspection locations may include
9 private facilities where fleet vehicles are serviced or maintained.
10 The state board and the Department of the California Highway
11 Patrol may conduct these inspections either cooperatively or
12 independently, and the state board may contract for assistance in
13 the conduct of these inspections.

14 (j) The state board shall inform the Department of the
15 California Highway Patrol whenever a vehicle owner cited
16 pursuant to this section fails to take a required corrective action or
17 to pay a civil penalty levied pursuant to subdivisions (h) and (k)
18 in a timely manner. Following notice and opportunity for an
19 administrative hearing pursuant to subdivision (n), the state board
20 may request the Department of the California Highway Patrol to
21 remove the vehicle from service and order the vehicle to be stored.
22 Upon notification from the state board of payment of any civil
23 penalties imposed under subdivision (h) and storage and related
24 charges, the vehicle shall be released to the owner or designee.
25 Upon release of the vehicle, the owner or designee shall correct
26 every deficiency specified in any citation to that owner with
27 respect to the vehicle.

28 (k) In addition to the corrective action required by subdivision
29 (f), and in addition to the civil penalty imposed by subdivision (h),
30 the owner of a motor vehicle cited by the state board pursuant to
31 this section shall pay a civil penalty of three hundred dollars (\$300)
32 per citation; except that this penalty shall not apply to the first
33 citation for any schoolbus. All civil penalties imposed pursuant to
34 this subdivision shall be collected by the state board and deposited
35 in the Diesel Emission Reduction Fund, which fund is hereby
36 created. Funds in the Diesel Emission Reduction Fund, when
37 appropriated by the Legislature, shall be available to the State
38 Energy Resources Conservation and Development Commission
39 for research, development, and demonstration programs



1 undertaken pursuant to Section 25617 of the Public Resources
2 Code.

3 (l) The state board shall adopt regulations that afford an owner
4 cited under this section an opportunity for an administrative
5 hearing consistent with, but not limited to, all of the following: (1)
6 any owner cited under this section may request an administrative
7 hearing within 45 days following either personal receipt or
8 certified mail receipt of the citation; (2) if the owner fails to request
9 an administrative hearing within 45 days, the citation shall be
10 deemed a final order and not subject to review by any court or
11 agency; (3) if the owner requests an administrative hearing and
12 fails to seek review by administrative mandamus pursuant to
13 Section 1094.5 of the Code of Civil Procedure within 60 days after
14 the mailing of the administrative hearing decision, the decision
15 shall be deemed a final order and not subject to review by any other
16 court or agency; and (4) the 45-day period may be extended by the
17 administrative hearing officer for good cause.

18 (m) Following exhaustion of the review procedures provided
19 for in subdivision (l), the state board may apply to the Superior
20 Court of Sacramento County for a judgment in the amount of the
21 civil penalty. The application, which shall include a certified copy
22 of the final order of the administrative hearing officer, shall
23 constitute a sufficient showing to warrant the issuance of the
24 judgment.

25 ~~SEC. 24.~~

26 SEC. 23. Section 44100 of the Health and Safety Code is
27 amended to read:

28 44100. The Legislature hereby finds and declares as follows:

29 (a) Emission reduction programs based on market principles
30 have the potential to provide equivalent or superior environmental
31 benefits when compared to existing controls at a lower cost to the
32 citizens of California than traditional emission control
33 requirements.

34 (b) Several studies have demonstrated that a small percentage
35 of light-duty vehicles contribute disproportionately to the on-road
36 emissions inventory. Programs to reduce or eliminate these excess
37 emissions can significantly contribute to the attainment of the
38 state's air quality goals.

(c) Programs to accelerate fleet turnover can enhance the effectiveness of the state's new motor vehicle standards by bringing more low-emission vehicles into the on-road fleet earlier.

(d) The California State Implementation Plan for Ozone (SIP), adopted November 15, 1994, and submitted to the Environmental Protection Agency, calls for added reductions in reactive organic gases (ROG) and oxides of nitrogen (NO_x) from light-duty vehicles by the year 2010. One of the more market-oriented approaches reflected in the SIP, known as the M-1 strategy, calls for accelerating the retirement of older light-duty vehicles in the South Coast Air Quality Management District to achieve the following emission reductions:

Year	Emissions, TPD (tons per day) (ROG + NO _x)
1999	9
2002	14
2005	20
2007	22
2010	25

(e) A program for achieving those and more emission reductions should be based on the following principles:

(1) The program should first contribute to the achievement of the emission reductions required by the inspection and maintenance program and the M-1 strategy of the 1994 SIP, and should permit the use of mobile source emission reduction credits for other purposes currently authorized by the state board or a district. Remaining credits may be used to achieve other emission reductions, including those required by the 1994 SIP, in a manner consistent with market-based strategies. Emission credits shall not be used to offset emission standards or other requirements for new vehicles, except as authorized by the state board.

(2) Participation by the vehicle owner shall be entirely voluntary and the program design should be sensitive to the concerns of car collectors and to consumers for whom older vehicles provide affordable transportation.

(3) The program design shall provide for real, surplus, and quantifiable emission reductions, based on an evaluation of the purchased vehicles, taking into account factors that include

1 per-mile emissions, annual miles driven, remaining useful life of
2 retired vehicles, and emissions of the typical or average
3 replacement vehicle, as determined by the state board. The
4 program shall ensure that there is no double counting of emission
5 credits among the various vehicle removal programs.

6 (4) The program should specify the emission reductions
7 required and then utilize the market to ensure that these reductions
8 are obtained at the lowest cost.

9 (5) The program should be privately operated. It should utilize
10 the experience and expertise gained from past successful
11 programs. Existing entities that are authorized by, contracted with,
12 or otherwise sanctioned by a district and approved by the state
13 board and the United States Environmental Protection Agency
14 shall be fully utilized for purposes of implementing this article.
15 Nothing in this paragraph restricts the Department of Consumer
16 Affairs from selecting qualified contractors to operate or
17 administer any program specified pursuant to this chapter.

18 (6) The program should be designed insofar as possible to
19 eliminate any benefit to any participants from vehicle tampering
20 and other forms of cheating. To the extent that tampering and other
21 forms of cheating might be advantageous, the program design
22 shall include provisions for monitoring the occurrence of
23 tampering and other forms of cheating.

24 (7) Emission credits should be expressed in pounds or other
25 units, and their value should be set by the marketplace. Any
26 contract between a public entity and a private party for the
27 purchase of emission credits should be based on a price per pound
28 which reflects the market value of the credit at its time of purchase.
29 Emission reductions required by the M-1 and other strategies of
30 the 1994 SIP shall be accomplished by competitive bid among
31 private businesses solicited by the oversight agency designated
32 pursuant to Section 44105.

33 ~~SEC. 25.~~

34 *SEC. 24.* Section 44104.5 of the Health and Safety Code is
35 amended to read:

36 44104.5. The regulations adopted pursuant to subdivision (a)
37 of Section 44101 shall include a plan to guide the execution of the
38 first two years of the program, to assess the results, and to
39 formulate recommendations. The plan shall also verify whether
40 the light-duty vehicle scrapping program included in the state

1 implementation plan adopted on November 15, 1994, can
2 reasonably be expected to yield the required emissions reductions
3 at reasonable cost-effectiveness. Scrapping of any vehicles under
4 this program for program development or testing or for generating
5 emission reductions to be credited against the M-1 strategy of the
6 1994 SIP may proceed before the state board adopts the
7 regulations pursuant to subdivision (a) of Section 44101 or the
8 plan required by this subdivision. The emission credits assigned to
9 these vehicles shall be adjusted as necessary to ensure that those
10 credits are consistent with the credits allowed under the
11 regulations adopted pursuant to Section 44101. The plan shall
12 include a baseline study, for the geographical area or areas
13 representative of those to be targeted by this program and by
14 measure M-1 in the SIP, of the current population of vehicles by
15 model year and market value and the current turnover rate of
16 vehicles, and other factors that may be essential to assessing
17 program effectiveness, cost-effectiveness, and market impacts of
18 the program.

19 ~~SEC. 26.~~

20 *SEC. 25.* Section 57007 of the Health and Safety Code is
21 amended to read:

22 57007. (a) The agency, and the offices, boards, and
23 departments within the agency, shall institute quality government
24 programs to achieve increased levels of environmental protection
25 and the public's satisfaction through improving the quality,
26 efficiency, and cost-effectiveness of the state programs that
27 implement and enforce state and federal environmental protection
28 statutes. These programs shall be designed to increase the level of
29 environmental protection while expediting decisionmaking and
30 producing cost savings. The secretary shall create an advisory
31 group comprised of state and local government, business,
32 environmental, and consumer representatives experienced in
33 quality management to provide guidance in that effort. The
34 secretary shall develop a model quality management program that
35 local agencies charged with implementing air quality, water
36 quality, toxics, solid waste, and hazardous waste laws and
37 regulations may use at their discretion.

38 (b) The agency, and each board, department, and office within
39 the agency, shall submit a biennial report to the Governor and
40 Legislature, in accordance with the requirements of Chapter 4

(commencing with Section 71069) of Part 2 of the Division 34 of the Public Resources Code, no later than December 1 with respect to the previous fiscal year, reporting on the extent to which these state agencies have attained their performance objectives, and on their continuous quality improvement efforts.

(c) Nothing in this section abrogates any collective bargaining agreement or interferes with any established employee rights.

(d) For purposes of this section, “quality government program” means all of the following:

(1) A process for obtaining the views of employees, the regulated community, the public, environmental organizations, and governmental officials with regard to the performance, vision, and needs of the agency implementing the quality government program.

(2) A process for developing measurable performance objectiveness using the views of the persons and organizations specified in paragraph (1).

(3) Processes for continually improving quality and for training agency personnel, using the information obtained from implementing paragraphs (1) and (2).

~~SEC. 27.~~

SEC. 26. Section 59019 of the Health and Safety Code is repealed.

~~SEC. 28.~~

SEC. 27. Section 115910 of the Health and Safety Code is amended to read:

115910. (a) On or before the 15th day of each month, each health officer shall submit to the board a survey documenting all beach postings and closures resulting from implementation of Section 115915 that occurred during the preceding month. The survey shall, at a minimum, include the following information:

(1) Identification of the beaches in each county subject to testing conducted pursuant to Section 115885 and the amount and types of monitoring conducted at each beach.

(2) Identification of the geographic location, areal extent, and type of action taken for each incident of posting or closure conducted pursuant to Section 115915. Geographic location and areal extent shall be noted in sufficient detail to determine on a common map, or by latitude and longitude, the approximate boundaries of the affected beaches.

(3) Identification of the standards exceeded and the causes and sources of the pollution, if known. Exceeded standards shall be identified with sufficient particularity to determine which types of tests and biological indicators were used to determine that an exceeded standard exists. Causes of pollution shall be identified with sufficient particularity to determine what substances, in addition to any water carrying the substances, were responsible for the exceeded standard. Sources shall be identified with sufficient particularity to determine the most specific geographical origin of the pollution sources available to the health officer at the time of the posting or closure.

(b) Surveys conducted pursuant to subdivision (a) shall be in a specific format established by the board on or before February 1, 2001. The board shall make the format easily accessible to the health officer through means that will enable the health officer to most effectively carry out the requirements of this section and enable the board to develop consistent, statewide data concerning the effect and status of beach postings and closures in a particular calendar year.

(c) On or before the 30th day of each month, the board shall make available to the public the information provided by the health officers. Based upon the data provided pursuant to subdivision (a), the report shall, at a minimum, include the location and duration of each beach closure and the suspected sources of the contamination that caused the closure, if known.

(d) The board shall continuously post on its Web site information documenting the beach posting and closure data provided to the board by the health officers including the location and duration of each beach closure and the suspected sources of the contamination that caused the closure, if known.

~~SEC. 29.~~

SEC. 28. Section 14315 of the Penal Code is amended to read:

14315. Not later than 36 months after the date when this title may be implemented, as specified in Section 14314, the secretary shall submit a report to the Governor and the Legislature in accordance with the requirements of Chapter 4 (commencing with Section 71069) of Part 2 of Division 34 of the Public Resources Code, describing the operation and accomplishments of the training programs and the environmental enforcement and prosecution projects funded by this title. The commission shall

1 prepare the section of the report pertaining to the course of
2 instruction authorized in Section 14304 and submit it to the
3 secretary for inclusion in the report.

4 ~~SEC. 30.—~~

5 *SEC. 29. Section 42885.5 of the Public Resources Code is*
6 *amended to read:*

7 42885.5. (a) The board shall adopt a five-year plan, which
8 shall be updated every two years, to establish goals and priorities
9 for the waste tire program and each program element.

10 (b) On or before July 1, 2001, and every two years thereafter,
11 the board shall submit the adopted five-year plan to the appropriate
12 policy and fiscal committees of the Legislature. The board shall
13 include, in the plan, programmatic and fiscal issues including, but
14 not limited to, the hierarchy used by the board to maximize
15 productive uses of waste and used tires and the performance
16 objectives and measurement criteria used by the board to evaluate
17 the success of its waste and used tire recycling program.
18 Additionally, the plan shall describe each program element's
19 effectiveness, based upon performance measures developed by the
20 board, including, but not limited to, the following:

21 (1) Enforcement and regulations relating to the storage of
22 waste and used tires.

23 (2) Cleanup, abatement, or other remedial action related to
24 waste tire stockpiles throughout the state.

25 (3) Research directed at promoting and developing alternatives
26 to the landfill disposal of waste tires.

27 (4) Market development and new technology activities for used
28 tires and waste tires.

29 (5) The waste and used tire hauler program and manifest
30 system.

31 (6) *A description of the grants, loans, contracts, and other*
32 *expenditures proposed to be made by the board under the tire*
33 *recycling program.*

34 (7) Until June 30, 2006, the grant program authorized under
35 Section 42872.5 to encourage the use of rubberized asphalt
36 concrete technology in public works projects.

37 (c) The board shall base the budget for the California Tire
38 Recycling Act and program funding on the plan.

39 (d) The plan may not propose financial or other support that
40 promotes, or provides for research for the incineration of tires.

1 SEC. 30. Section 42889.1 of the Public Resources Code is
2 repealed.

3 ~~SEC. 31. Section 42889.4 of the Public Resources Code is~~
4 ~~repealed.~~

5 SEC. 31. *Section 42889.4 of the Public Resources Code is*
6 *amended to read:*

7 42889.4. ~~On or before January 1 of each year~~ *If new facilities*
8 *are permitted to burn tires in the previous calendar year, the State*
9 *Air Resources Board, in conjunction with air pollution control*
10 *districts and air quality management districts, shall submit an*
11 ~~annual report to the Governor, the Legislature, and the board post~~
12 ~~on its Web site, on or before July 1 of the subsequent year,~~
13 *information summarizing the types and quantities of air emissions,*
14 *if any, from those facilities permitted to burn tires during the*
15 *previous year.*

16 SEC. 32. Chapter 4 (commencing with Section 71069) is
17 added to Part 2 of Division 34 of the Public Resources Code, to
18 read:

19
20 CHAPTER 4. REPORT AND INFORMATION MANAGEMENT

21
22 71069. The Legislature finds and declares the following:

23 (a) It is the policy of the state to conserve and protect its natural
24 resources.

25 (b) Over 1,400 reports are submitted annually to the
26 Legislature and the Governor, costing up to ten thousand dollars
27 (\$10,000) per report for printing and distribution.

28 (c) The California Environmental Protection Agency has
29 historically submitted over 60 reports annually to the Legislature
30 and the Governor. The agency's boards, departments, and offices
31 submit over 300 additional reports and studies, not including the
32 hundreds of guidance documents, fact sheets and other printed
33 materials produced.

34 (d) Submitting reports to the Legislature and Governor
35 electronically, by compact disc, and posting the reports on state
36 agency Web sites would greatly improve economic efficiency and
37 environmental sustainability through minimized consumption of
38 paper and printing materials, while reducing the economic and
39 environmental costs associated with the production, distribution,
40 and storage of printed reports.

(e) Access to the World Wide Web is continually expanding for the private sector and the general public. Providing reports electronically on state agency Web sites would grant greater accessibility to these reports and allow for greater sharing of knowledge and data with Californians and other information seekers. In some instances, a printed copy of a report is necessary. In those instances, economic efficiency and environmental sustainability can still be realized through various resource conservation efforts.

(f) Current law mandates state agencies to purchase recycled content products and materials, including printing and writing paper. There are also proven techniques and materials that are environmentally and economically preferable, and are widely available for use of all document production.

71069.5. For purposes of this chapter “board” means the California Integrated Waste Management Board.

71070. (a) On or before January 1, 2005, the board, in consultation with the state agencies affected by the changes made by the act of the 2003–04 Regular Session of the Legislature adding this chapter, shall develop and implement guidelines, to provide and produce reports and other documentation, including guidance documents, fact sheets, and other publications and written materials, in the most efficient and environmentally sustainable manner possible.

(b) The guidelines shall include, but not be limited to, all of the following:

(1) Distribution of reports and other documentation by electronic means and compact discs.

(2) Information on posting reports and other documentation on state agency Web sites.

(3) Techniques for the production of reports and other ~~documentation that are economically and environmentally preferable, including, but not limited to, double-sided printing, using postconsumer recycled content paper, and minimizing ink coverage.~~ *documentation that will reduce waste and encourage the use of recycled goods, materials, and supplies.*

(4) The cost reduction options specified in Section 7550.1 of the Government Code.

(5) Distribution of a reasonable number of printed reports to ensure public access.

1 (c) On or before February 1, 2005, the board shall distribute the
2 guidelines to each state agency.

3 71071. (a) On and after February 1, 2005, the California
4 Environmental Protection Agency and its boards, departments,
5 and offices shall provide and produce reports and other
6 documentation pursuant to the guidelines established in Section
7 71070.

8 (b) On and after June 1, 2005, all state agencies not otherwise
9 subject to subdivision (b) shall provide and produce reports and
10 other documentation pursuant to the guidelines established in
11 Section 71070.

12 SEC. 33. Section 7672 of the Public Utilities Code is amended
13 to read:

14 7672. For purposes of this article, “hazardous material”
15 means either of the following:

16 (a) A hazardous material, as defined in Section 171.8 of Title
17 49 of the Code of Federal Regulations.

18 (b) A hazardous material, as defined in Section 25501 of the
19 Health and Safety Code.

20 SEC. 34. Section 7711 of the Public Utilities Code is amended
21 to read:

22 7711. On or before July 1, 1992, and on or before July 1
23 annually thereafter, the commission shall report to the Legislature
24 on sites on railroad lines in the state it finds to be hazardous. The
25 report shall include, but not be limited to, information on all of the
26 following:

27 (a) A list of all railroad derailment accident sites in the state on
28 which accidents have occurred within at least the previous five
29 years. The list shall describe the nature and probable causes of the
30 accidents, if known, and shall indicate whether the accidents
31 occurred at or near sites that the commission, pursuant to
32 subdivision (b), has determined pose a local safety hazard.

33 (b) A list of all railroad sites in the state that the commission,
34 pursuant to Section 20106 of Title 49 of the United States Code,
35 determines pose a local safety hazard. The commission may
36 submit in the annual report the list of railroad sites submitted in the
37 immediate prior year annual report, and may amend or revise that
38 list from the immediate prior year as necessary. Factors that the
39 commission shall consider in determining a local safety hazard
40 may include, but need not be limited to, all of the following:



1 (1) The severity of grade and curve of track.

2 (2) The value of special skills of train operators in negotiating
3 the particular segment of railroad line.

4 (3) The value of special railroad equipment in negotiating the
5 particular segment of railroad line.

6 (4) The types of commodities transported on or near the
7 particular segment of railroad line.

8 (5) The hazard posed by the release of the commodity into the
9 environment.

10 (6) The value of special railroad equipment in the process of
11 safely loading, transporting, storing, or unloading potentially
12 hazardous commodities.

13 (7) The proximity of railroad activity to human activity or
14 sensitive environmental areas.

15 (c) In determining which railroad sites pose a local safety
16 hazard pursuant to subdivision (b), the commission shall consider
17 the history of accidents at or near the sites. The commission shall
18 not limit its determination to sites at which accidents have already
19 occurred, but shall identify potentially hazardous sites based on
20 the criteria enumerated in subdivision (b) and all other criteria that
21 the commission determines influence railroad safety. The
22 commission shall also consider whether any local safety hazards
23 at railroad sites have been eliminated or sufficiently remediated to
24 warrant removal of the site from the list required under subdivision
25 (b).

26 SEC. 35. Section 7712 of the Public Utilities Code is amended
27 to read:

28 7712. On or before January 1, 1993, the commission shall
29 adopt regulations, based on its findings and not inconsistent with
30 federal law. The commission may amend or revise the regulations
31 as necessary thereafter, to reduce the potential railroad hazards
32 identified in Section 7711. In adopting the regulations, the
33 commission shall consider at least all of the following:

34 (a) Establishing special railroad equipment standards for trains
35 operated on railroad sites identified as posing a local safety hazard
36 pursuant to subdivision (b) of Section 7711. These standards may
37 include, but need not be limited to, standards for all of the
38 following:

39 (1) Sizes, numbers, and configurations of locomotives.

40 (2) Brakes.

(b) Establishing special train operating standards for trains operated over railroad sites identified as posing a local safety hazard pursuant to subdivision (b) of Section 7711. These standards may include, but need not be limited to, standards for all of the following:

(1) Length, weight, and weight distribution of trains.

(2) Speeds and accelerations of trains.

(3) Hours of allowable travel.

(c) Establishing special training, personnel, and performance standards for operators of trains that travel on railroad sites identified as posing a local safety hazard pursuant to subdivision (b) of Section 7711.

(d) Establishing special inspection and reporting standards for trains operated on railroad sites identified as posing a local safety hazard pursuant to subdivision (b) of Section ~~744~~ 7711.

SEC. 36. Section 10782 of the Water Code is repealed.

SEC. 37. Section 13191 of the Water Code is amended to read:

13191. The state board shall convene an advisory group or groups to assist in the evaluation of program structure and effectiveness as it relates to the implementation of the requirements of Section 303(d) of the Clean Water Act (33 U.S.C. 1313(d)), and applicable federal regulations and monitoring and assessment programs. The advisory group or groups shall be comprised of persons concerned with the requirements of Section 303(d) of the Clean Water Act. The state board shall provide public notice on its website of any meetings of the advisory group or groups and, upon the request of any party shall mail notice of the time and location of any meeting of the group or groups. The board shall also ensure that the advisory group or groups meet in a manner that facilitates the effective participation of the public and the stakeholder participants.

SEC. 38. Section 13192 of the Water Code is repealed.

SEC. 39. Section 13198 of the Water Code is repealed.

SEC. 40. Section 13292 of the Water Code is amended to read:

13292. (a) It is the responsibility of the state board to provide guidance to the regional boards in matters of procedure, as well as policy and regulation. In order to ensure that regional boards are providing fair, timely, and equal access to all participants in regional board proceedings, the state board shall undertake a review of the regional boards' public participation procedures. As

part of the review process, and upon request by the state board, the regional boards shall solicit comments from participants in their proceedings. Upon completion of the review, the state board shall report to the Legislature, in accordance with the requirements of Chapter 4 (commencing with 71069) of Part 2 of Division 34 of the Public Resources Code, regarding its findings and include recommendations to improve regional board public participation processes.

(b) (1) The state board shall provide annual training to regional board members to improve public participation procedures at the regional level.

(2) Paragraph (1) shall be implemented only during fiscal years for which funding is provided for the purposes of that paragraph in the annual Budget Act or in another statute.

SEC. 41. Section 13369 of the Water Code is amended to read:

13369. (a) (1) The state board, in consultation with the regional boards, the California Coastal Commission, and other appropriate state agencies and advisory groups, as necessary, shall prepare a detailed program for the purpose of implementing the state's nonpoint source management plan. The board shall address all applicable provisions of the Clean Water Act, including Section 319 (33 U.S.C. Sec. 1329), as well as Section 6217 of the federal Coastal Zone Act Reauthorization Amendments of 1990 (16 U.S.C. Sec. 1455b), and this division in the preparation of this detailed implementation program.

(2) (A) The program shall include all of the following components:

(i) Nonregulatory implementation of best management practices.

(ii) Regulatory-based incentives for best management practices.

(iii) The adoption and enforcement of waste discharge requirements that will require the implementation of best management practices.

(B) In connection with its duties under this subdivision to prepare and implement the state's nonpoint source management plan, the state board shall develop, on or before February 1, 2001, guidance to be used by the state board and the regional boards for the purpose of describing the process by which the state board and

1 the regional boards will enforce the state's nonpoint source
2 management plan, pursuant to this division.

3 (C) The adoption of the guidance developed pursuant to this
4 section is not subject to Chapter 3.5 (commencing with Section
5 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

6 (b) Notwithstanding Section 7550.5 of the Government Code,
7 and in consultation with the California Coastal Commission and
8 other appropriate agencies, as necessary, the state board, on or
9 before December 31 of each year, shall submit to the Legislature,
10 and make available to the public, in accordance with the
11 requirements of Chapter 4 (commencing with Section 71069) of
12 Part 2 of Division 34 of the Public Resources Code, both of the
13 following:

14 (1) Copies of all state and regional board reports that contain
15 information related to nonpoint source pollution and that the state
16 or regional boards were required to prepare in the previous fiscal
17 year pursuant to Sections 303, 305(b), and 319 of the Clean Water
18 Act (33 U.S.C. Secs. 1313, 1315(b), and 1329), Section 6217 of
19 the federal Coastal Zone Act Reauthorization Amendments of
20 1990 (16 U.S.C. Sec. 1455b), related regulations, and this
21 division.

22 (2) A summary of information related to nonpoint source
23 pollution that is set forth in the reports described pursuant to
24 paragraph (1) including, but not limited to, summaries of both of
25 the following:

26 (A) Information that is related to nonpoint source pollution and
27 that is required to be included in reports prepared pursuant to
28 Section 305(b) of the Clean Water Act (33 U.S.C. 1315(b)).

29 (B) Information that is required to be in reports prepared
30 pursuant to Section 319(h)(11) of the Clean Water Act (33 U.S.C.
31 Sec. 1329(h)(11)).

32 SEC. 42. Section 13385 of the Water Code is amended to read:

33 13385. (a) Any person who violates any of the following
34 shall be liable civilly in accordance with this section:

35 (1) Section 13375 or 13376.

36 (2) Any waste discharge requirements or dredged or fill
37 material permit issued pursuant to this chapter or any water quality
38 certification issued pursuant to Section 13160.

39 (3) Any requirements established pursuant to Section 13383.

1 (4) Any order or prohibition issued pursuant to Section 13243
2 or Article 1 (commencing with Section 13300) of Chapter 5, if the
3 activity subject to the order or prohibition is subject to regulation
4 under this chapter.

5 (5) Any requirements of Section 301, 302, 306, 307, 308, 318,
6 401, or 405 of the Clean Water Act, as amended.

7 (6) Any requirement imposed in a pretreatment program
8 approved pursuant to waste discharge requirements issued under
9 Section 13377 or approved pursuant to a permit issued by the
10 administrator.

11 (b) Civil liability may be imposed by the superior court in an
12 amount not to exceed the sum of both of the following:

13 (1) Twenty-five thousand dollars (\$25,000) for each day in
14 which the violation occurs.

15 (2) Where there is a discharge, any portion of which is not
16 susceptible to cleanup or is not cleaned up, and the volume
17 discharged but not cleaned up exceeds 1,000 gallons, an additional
18 liability not to exceed twenty-five dollars (\$25) multiplied by the
19 number of gallons by which the volume discharged but not cleaned
20 up exceeds 1,000 gallons.

21 The Attorney General, upon request of a regional board or the
22 state board, shall petition the superior court to impose the liability.

23 (c) Civil liability may be imposed administratively by the state
24 board or a regional board pursuant to Article 2.5 (commencing
25 with Section 13323) of Chapter 5 in an amount not to exceed the
26 sum of both of the following:

27 (1) Ten thousand dollars (\$10,000) for each day in which the
28 violation occurs.

29 (2) Where there is a discharge, any portion of which is not
30 susceptible to cleanup or is not cleaned up, and the volume
31 discharged but not cleaned up exceeds 1,000 gallons, an additional
32 liability not to exceed ten dollars (\$10) multiplied by the number
33 of gallons by which the volume discharged but not cleaned up
34 exceeds 1,000 gallons.

35 (d) For purposes of subdivisions (b) and (c), the term
36 “discharge” includes any discharge to navigable waters of the
37 United States, any introduction of pollutants into a publicly owned
38 treatment works, or any use or disposal of sewage sludge.

39 (e) In determining the amount of any liability imposed under
40 this section, the regional board, the state board, or the superior

1 court, as the case may be, shall take into account the nature,
2 circumstances, extent, and gravity of the violation or violations,
3 whether the discharge is susceptible to cleanup or abatement, the
4 degree of toxicity of the discharge, and, with respect to the
5 violator, the ability to pay, the effect on its ability to continue its
6 business, any voluntary cleanup efforts undertaken, any prior
7 history of violations, the degree of culpability, economic benefit
8 or savings, if any, resulting from the violation, and other matters
9 that justice may require. At a minimum, liability shall be assessed
10 at a level that recovers the economic benefits, if any, derived from
11 the acts that constitute the violation.

12 (f) (1) Except as provided in paragraph (2), for the purposes of
13 this section, a single operational upset that leads to simultaneous
14 violations of more than one pollutant parameter shall be treated as
15 a single violation.

16 (2) (A) For the purposes of subdivisions (h) and (i), a single
17 operational upset in a wastewater treatment unit that treats
18 wastewater using a biological treatment process shall be treated as
19 a single violation, even if the operational upset results in violations
20 of more than one effluent limitation and the violations continue for
21 a period of more than one day, if all of the following apply:

22 (i) The discharger demonstrates all of the following:

23 (I) The upset was not caused by wastewater treatment operator
24 error and was not due to discharger negligence.

25 (II) But for the operational upset of the biological treatment
26 process, the violations would not have occurred nor would they
27 have continued for more than one day.

28 (III) The discharger carried out all reasonable and immediately
29 feasible actions to reduce noncompliance with the applicable
30 effluent limitations.

31 (ii) The discharger is implementing an approved pretreatment
32 program, if so required by federal or state law.

33 (B) Subparagraph (A) only applies to violations that occur
34 during a period for which the regional board has determined that
35 violations are unavoidable, but in no case may that period exceed
36 30 days.

37 (g) Remedies under this section are in addition to, and do not
38 supersede or limit, any other remedies, civil or criminal, except
39 that no liability shall be recoverable under Section 13261, 13265,



1 13268, or 13350 for violations for which liability is recovered
2 under this section.

3 (h) (1) Notwithstanding any other provision of this division,
4 and except as provided in subdivisions (j), (k), and (l), a mandatory
5 minimum penalty of three thousand dollars (\$3,000) shall be
6 assessed for each serious violation.

7 (2) For the purposes of this section, a “serious violation”
8 means any waste discharge that violates the effluent limitations
9 contained in the applicable waste discharge requirements for a
10 Group II pollutant, as specified in Appendix A to Section 123.45
11 of Title 40 of the Code of Federal Regulations, by 20 percent or
12 more or for a Group I pollutant, as specified in Appendix A to
13 Section 123.45 of Title 40 of the Code of Federal Regulations, by
14 40 percent or more.

15 (i) (1) Notwithstanding any other provision of this division,
16 and except as provided in subdivisions (j), (k), and (l), a mandatory
17 minimum penalty of three thousand dollars (\$3,000) shall be
18 assessed for each violation whenever the person does any of the
19 following four or more times in any period of six consecutive
20 months, except that the requirement to assess the mandatory
21 minimum penalty shall not be applicable to the first three
22 violations:

23 (A) Violates a waste discharge requirement effluent limitation.

24 (B) Fails to file a report pursuant to Section 13260.

25 (C) Files an incomplete report pursuant to Section 13260.

26 (D) Violates a toxicity effluent limitation contained in the
27 applicable waste discharge requirements where the waste
28 discharge requirements do not contain pollutant-specific effluent
29 limitations for toxic pollutants.

30 (2) For the purposes of this section, a “period of six
31 consecutive months” means the period commencing on the date
32 that one of the violations described in this subdivision occurs and
33 ending 180 days after that date.

34 (j) Subdivisions (h) and (i) do not apply to any of the following:
35 (1) A violation caused by one or any combination of the
36 following:

37 (A) An act of war.

38 (B) An unanticipated, grave natural disaster or other natural
39 phenomenon of an exceptional, inevitable, and irresistible

1 character, the effects of which could not have been prevented or
2 avoided by the exercise of due care or foresight.

3 (C) An intentional act of a third party, the effects of which
4 could not have been prevented or avoided by the exercise of due
5 care or foresight.

6 (D) (i) The operation of a new or reconstructed wastewater
7 treatment unit during a defined period of adjusting or testing, not
8 to exceed 90 days for a wastewater treatment unit that relies on a
9 biological treatment process and not to exceed 30 days for any
10 other wastewater treatment unit, if all of the following
11 requirements are met:

12 (I) The discharger has submitted to the regional board, at least
13 30 days in advance of the operation, an operations plan that
14 describes the actions the discharger will take during the period of
15 adjusting and testing, including steps to prevent violations and
16 identifies the shortest reasonable time required for the period of
17 adjusting and testing, not to exceed 90 days for a wastewater
18 treatment unit that relies on a biological treatment process and not
19 to exceed 30 days for any other wastewater treatment unit.

20 (II) The regional board has not objected in writing to the
21 operations plan.

22 (III) The discharger demonstrates that the violations resulted
23 from the operation of the new or reconstructed wastewater
24 treatment unit and that the violations could not have reasonably
25 been avoided.

26 (IV) The discharger demonstrates compliance with the
27 operations plan.

28 (V) In the case of a reconstructed wastewater treatment unit,
29 the unit relies on a biological treatment process that is required to
30 be out of operation for at least 14 days in order to perform the
31 reconstruction, or the unit is required to be out of operation for at
32 least 14 days and, at the time of the reconstruction, the cost of
33 reconstructing the unit exceeds 50 percent of the cost of replacing
34 the wastewater treatment unit.

35 (ii) For the purposes of this section, “wastewater treatment
36 unit” means a component of a wastewater treatment plant that
37 performs a designated treatment function.

38 (2) (A) Except as provided in subparagraph (B), a violation of
39 an effluent limitation where the waste discharge is in compliance
40 with either a cease and desist order issued pursuant to Section



1 13301 or a time schedule order issued pursuant to Section 13300,
2 if all of the following requirements are met:

3 (i) The cease and desist order or time schedule order is issued
4 after January 1, 1995, but not later than July 1, 2000, specifies the
5 actions that the discharger is required to take in order to correct the
6 violations that would otherwise be subject to subdivisions (h) and
7 (i), and the date by which compliance is required to be achieved
8 and, if the final date by which compliance is required to be
9 achieved is later than one year from the effective date of the cease
10 and desist order or time schedule order, specifies the interim
11 requirements by which progress towards compliance will be
12 measured and the date by which the discharger will be in
13 compliance with each interim requirement.

14 (ii) The discharger has prepared and is implementing in a
15 timely and proper manner, or is required by the regional board to
16 prepare and implement, a pollution prevention plan that meets the
17 requirements of Section 13263.3.

18 (iii) The discharger demonstrates that it has carried out all
19 reasonable and immediately feasible actions to reduce
20 noncompliance with the waste discharge requirements applicable
21 to the waste discharge and the executive officer of the regional
22 board concurs with the demonstration.

23 (B) Subdivisions (h) and (i) shall become applicable to a waste
24 discharge on the date the waste discharge requirements applicable
25 to the waste discharge are revised and reissued pursuant to Section
26 13380, unless the regional board does all of the following on or
27 before that date:

28 (i) Modifies the requirements of the cease and desist order or
29 time schedule order as may be necessary to make it fully consistent
30 with the reissued waste discharge requirements.

31 (ii) Establishes in the modified cease and desist order or time
32 schedule order a date by which full compliance with the reissued
33 waste discharge requirements shall be achieved. For the purposes
34 of this subdivision, the regional board may not establish this date
35 later than five years from the date the waste discharge
36 requirements were required to be reviewed pursuant to Section
37 13380. If the reissued waste discharge requirements do not add
38 new effluent limitations or do not include effluent limitations that
39 are more stringent than those in the original waste discharge
40 requirements, the date shall be the same as the final date for

1 compliance in the original cease and desist order or time schedule
2 order or five years from the date that the waste discharge
3 requirements were required to be reviewed pursuant to Section
4 13380, whichever is earlier.

5 (iii) Determines that the pollution prevention plan required by
6 clause (ii) of subparagraph (A) is in compliance with the
7 requirements of Section 13263.3 and that the discharger is
8 implementing the pollution prevention plan in a timely and proper
9 manner.

10 (3) A violation of an effluent limitation where the waste
11 discharge is in compliance with either a cease and desist order
12 issued pursuant to Section 13301 or a time schedule order issued
13 pursuant to Section 13300 or Section 13308, if all of the following
14 requirements are met:

15 (A) The cease and desist order or time schedule order is issued
16 on or after July 1, 2000, and specifies the actions that the
17 discharger is required to take in order to correct the violations that
18 would otherwise be subject to subdivisions (h) and (i).

19 (B) The regional board finds that, for one of the following
20 reasons, the discharger is not able to consistently comply with one
21 or more of the effluent limitations established in the waste
22 discharge requirements applicable to the waste discharge:

23 (i) The effluent limitation is a new, more stringent, or modified
24 regulatory requirement that has become applicable to the waste
25 discharge after the effective date of the waste discharge
26 requirements and after July 1, 2000, new or modified control
27 measures are necessary in order to comply with the effluent
28 limitation, and the new or modified control measures cannot be
29 designed, installed, and put into operation within 30 calendar days.

30 (ii) New methods for detecting or measuring a pollutant in the
31 waste discharge demonstrate that new or modified control
32 measures are necessary in order to comply with the effluent
33 limitation and the new or modified control measures cannot be
34 designed, installed, and put into operation within 30 calendar days.

35 (iii) Unanticipated changes in the quality of the municipal or
36 industrial water supply available to the discharger are the cause of
37 unavoidable changes in the composition of the waste discharge,
38 the changes in the composition of the waste discharge are the cause
39 of the inability to comply with the effluent limitation, no
40 alternative water supply is reasonably available to the discharger,

1 and new or modified measures to control the composition of the
2 waste discharge cannot be designed, installed, and put into
3 operation within 30 calendar days.

4 (iv) The discharger is a publicly owned treatment works
5 located in Orange County that is unable to meet effluent
6 limitations for biological oxygen demand, suspended solids, or
7 both, because the publicly owned treatment works meets all of the
8 following criteria:

9 (I) Was previously operating under modified secondary
10 treatment requirements pursuant to Section 301(h) of the Clean
11 Water Act (33 U.S.C. Sec. 1311(h)).

12 (II) Did vote on July 17, 2002, not to apply for a renewal of the
13 modified secondary treatment requirements.

14 (III) Is in the process of upgrading its treatment facilities to
15 meet the secondary treatment standards required by Section
16 301(b)(1)(B) of the Clean Water Act (33 U.S.C. Sec.
17 1311(b)(1)(B)).

18 (C) The regional board establishes a time schedule for bringing
19 the waste discharge into compliance with the effluent limitation
20 that is as short as possible, taking into account the technological,
21 operational, and economic factors that affect the design,
22 development, and implementation of the control measures that are
23 necessary to comply with the effluent limitation. For the purposes
24 of this subdivision, the time schedule may not exceed five years in
25 length, except that the time schedule may not exceed 10 years in
26 length for the upgrade described in subparagraph (B)(iv)(III). If
27 the time schedule exceeds one year from the effective date of the
28 order, the schedule shall include interim requirements and the
29 dates for their achievement. The interim requirements shall
30 include both of the following:

31 (i) Effluent limitations for the pollutant or pollutants of
32 concern.

33 (ii) Actions and milestones leading to compliance with the
34 effluent limitation.

35 (D) The discharger has prepared and is implementing in a
36 timely and proper manner, or is required by the regional board to
37 prepare and implement, a pollution prevention plan pursuant to
38 Section 13263.3.

39 (k) In lieu of assessing all or a portion of the mandatory
40 minimum penalties pursuant to subdivisions (h) and (i) against a

POTW serving a small community, as defined by subdivision (b) of Section 79084, the state board or the regional board may elect to require the POTW to spend an equivalent amount towards the completion of a compliance project proposed by the POTW, if the state or regional board finds all of the following:

(1) The compliance project is designed to correct the violations within five years.

(2) The compliance project is in accordance with the enforcement policy of the state board.

(3) The POTW has demonstrated that it has sufficient funding to complete the compliance project.

(l) (1) In lieu of assessing penalties pursuant to subdivision (h) or (i), the state board or regional board, with the concurrence of the discharger, may direct a portion of the penalty amount to be expended on a supplemental environmental project in accordance with the enforcement policy of the state board. If the penalty amount exceeds fifteen thousand dollars (\$15,000), the portion of the penalty amount that may be directed to be expended on a supplemental environmental project may not exceed fifteen thousand dollars (\$15,000) plus 50 percent of the penalty amount that exceeds fifteen thousand dollars (\$15,000).

(2) For the purposes of this section, a “supplemental environmental project” means an environmentally beneficial project that a person agrees to undertake, with the approval of the regional board, that would not be undertaken in the absence of an enforcement action under this section.

(3) This subdivision applies to the imposition of penalties pursuant to subdivision (h) or (i) on or after January 1, 2003, without regard to the date on which the violation occurs.

(m) The Attorney General, upon request of a regional board or the state board, shall petition the appropriate court to collect any liability or penalty imposed pursuant to this section. Any person who fails to pay on a timely basis any liability or penalty imposed under this section shall be required to pay, in addition to that liability or penalty, interest, attorneys’ fees, costs for collection proceedings, and a quarterly nonpayment penalty for each quarter during which the failure to pay persists. The nonpayment penalty shall be in an amount equal to 20 percent of the aggregate amount of the person’s penalty and nonpayment penalties that are unpaid as of the beginning of the quarter.

(n) (1) Subject to paragraph (2), funds collected pursuant to this section shall be deposited in the State Water Pollution Cleanup and Abatement Account.

(2) (A) Notwithstanding any other provision of law, moneys collected for a violation of a water quality certification in accordance with paragraph (2) of subdivision (a) or for a violation of Section 401 of the Clean Water Act (33 U.S.C. Sec. 1341) in accordance with paragraph (5) of subdivision (a) shall be deposited in the Waste Discharge Permit Fund and separately accounted for in that fund.

(B) The funds described in subparagraph (A) shall be expended by the state board, upon appropriation by the Legislature, to assist regional boards, and other public agencies with authority to clean up waste or abate the effects of the waste, in cleaning up or abating the effects of the waste on waters of the state or for the purposes authorized in Section 13443.

(o) The state board shall report information on its Web site regarding its enforcement activities. The information shall include all of the following:

(1) A compilation of the number of violations of waste discharge requirements in the previous calendar year, *including stormwater enforcement violations*.

(2) A record of the formal and informal compliance and enforcement actions taken for each violation.

(3) An analysis of the effectiveness of current enforcement policies, including mandatory minimum penalties.

(4) *A record of the formal and informal compliance and enforcement actions taken for each violation, including storm water enforcement action.*

(p) The amendments made to subdivisions (f), (h), (i) and (j) during the second year of the 2001–02 Regular Session apply only to violations that occur on or after January 1, 2003.

SEC. 43. Section 13399.39 of the Water Code is repealed.

~~SEC. 44. Section 4 of Chapter 435 of the Statutes of 1994 is repealed.~~

SEC. 44. Section 4 of Chapter 435 of the Statutes of 1994 is amended to read:

Sec. 4. The Department of Toxic Substances Control shall ~~report annually to the Governor and the Legislature provide information on its Web site biennially~~ on its progress in

1 implementing the pilot program established by Chapter 6.85
2 (commencing with Section 25396) of Division 20 of the Health
3 and Safety Code, as added by Section 2 of this act. The ~~report~~
4 *information* shall describe the activities which the department has
5 taken during the past ~~year~~ *two years* in implementing the pilot
6 program, list the sites that have been selected for response action
7 and the sites that have been issued a certificate of completion under
8 the program, evaluate its effectiveness in expediting the cleanup
9 of selected sites, *and* compare its effectiveness with that of the
10 voluntary cleanup “walk-in” program that the department
11 administers pursuant to Chapter 6.5 (commencing with Section
12 25100) of, and Chapter 6.8 (commencing with Section 25300) of,
13 Division 20 of the Health and Safety Code, ~~and make~~
14 ~~recommendations concerning the administration of the pilot~~
15 ~~program.~~

